

Proposals for the Reform of Iranian Law on the Discharge of Contractual Obligations

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Abstract: Article 264 of the Iranian Civil Code dwells on the discharge of obligation. The objective of this study is to address the lacunae and ambiguities identified in the said article. Toward this end, the article proposes a new classification of the means for the discharge of obligation which is in tune with legal developments in a new world, as well as a set of definitions for five of the six means of discharge left undefined in Article 264. The article begins by interrogating the classification of the means of discharge of and obligation contained and in Article 264, the lack of suitable definitions and the French influence on the drafting of the said article. The article then outlines other possible means for the discharge of obligation not contained in article 264 but are only mentioned in passing in different parts of the Civil Code. Following this, an alternative classification of the means for the discharge of obligation, comprising both direct and indirect means, is offered. The study also draws upon the views of other Islamic commentators on the scope for the improvement of Article 264. This article is a library-based research and the method is analytic and critical.

Key words: Discharge, obligation, contract, reform, Civil Code, Iran

INTRODUCTION

Article 264 of the Iranian Civil Code relates to the discharge of obligation. Discharge of obligation is the cancellation of an existing commitment by legal means. These means are provided in Article 264 of the Iranian Civil Code. Islamic law has long been one of the sources of Iranian law (Vahid, 2004). Before the constitutional revolution, the Iranian judicial system depended on Islamic law. Sharia judges adhered to the rules of Islamic jurisprudence as the countrys official law. However, following the installation of a constitutional government and the establishment of a legislative assembly in Iran, law and Sharia became 2 separate systems.

In 1926, Reza Pahlavi took over power in Iran. He believed in nationalism and adopted secularism as the basis of his reforms (Zarini and Hazhirian, 2009). A prominent figure in the reformist Reza regime was Ali Akbar Davar who bore responsibility for the administration of justice. A graduate of the Western educational system, Davar brought about fundamental changes in the Iranian judicial system (Ghaem-Maghami, 2007). Because of the ingrained nature of Islamic law and culture in the country, policy makers of the time decided to assign the task of organising and drafting the Iranian Civil Code to a commission consisting of both law graduates from Western, particularly French educational

institutions and Islamic legal scholars. In finally preparing the Iranian Civil Code, the drafters adopted the form of the French Civil Code but adapted its contents to Islamic law. Thus in the resulting legislation of civil rights, there was a fusion of both Islamism and modernism. In 1928, the first volume of the Civil Code was ratified in the legislative assembly of the time. It is relevant to note that in addition to the influence of Western-trained Iranian legal scholars, the proximity of Islamic law as a written form of law, to Roman-Germanic law also made the latter appeal to the drafters of the Civil Code. This combination of factors made the structure of the new Iranian legal system to gravitate toward the written system of law (Harisinejad, 2009). This structural imitation with all associated its features has, however precipitated a number of problems.

The 1979 Revolution in Iran strengthened the authority of Islamic followers and Islamic law was officially initiated into the lives of the Iranian people. Principle No. 4 of the Iranian Constitution explicitly provided that all civil, penal, financial, economic, official, cultural, military, political and other rules should be based on Islamic standards (Katuzian, 2009). Therefore, after the 1979 Revolution what emerged in Iran was the establishment of a system of Islamic rules.

Islamic rules were made for the organisation of social relations. Those rules addressed several aspects of social

relations of which obligation, as the cornerstone of social relations was one. In an obligation, a legal relation is established and which is terminated by way of discharge. This study proposes a new framework for removing the ambiguities present in Article 264 of the Iranian Civil Code. The study is library-based and employs an analytic and critical method (Yaqin, 2007).

ANALYSIS AND CRITICISM OF DISCHARGE OF CONTRACTUAL OBLIGATION IN THE IRANIAN CIVIL CODE

An obligation is made in order to fulfil its contents but it does not remain forever. When an obligation is made, it can be discharged through a variety of means. For example, an obligation could be discharged by expiration, dissolution and annulment. More usually, a contract would be discharged finally by the fulfilment of its obligation.

In Article 183 of the Iranian Civil Code, the word contract is defined but no definition is provided for agreement. This has resulted in ambiguities. However, Sayed Hasan Emami, one of the well-known Iranian lawyers, believes that contract and agreement are synonymous (Emami, 2000). Katouzian, another leading Iranian lawyer, shares the same view (Katouzian, 2006).

Also, an obligation has been attributed with the meaning, bind, duty and debt. Therefore, it can be said that an obligation is a binding legal relationship which fulfilment is obligatory for the debtor (Mortazavi, 2008). According to Article 264 of the Iranian Civil Code, obligations are discharged through one of the following means: Fulfilment of obligation, cancellation of contract by mutual consent, release from obligation, substitution of a different obligation, offset and recoupment and acquisition of debt. The drafters of the Iranian Civil Code extracted Article 264 thereof from Article 1234 of the French Civil Code (Navard, 1995). A principal drawback of the approach followed by the drafters of the Iranian Civil Code lies in the categorisation and presentation of the means of discharge of obligation, as well as the associated ambiguities. These ambiguities have attracted critical comments, some of which follow.

Article 264 of the Iranian Civil Code is not comprehensive in providing for all the possible means for the discharge of obligation (Ahmadi, 2012). This is because although, an obligor becomes discharged by fulfilling the relevant obligation which is henceforth discharged, identical to the discharge of obligation, a performed obligation should not be considered to be the discharge of the obligation. Rather, the performance of an obligation is only a tool for the termination of that obligation. Furthermore, the cancellation of contract by

mutual consent is a common means for terminating an obligation but not for discharging it (as Iranian legislators tended to believe). In addition, if the cancellation of contract by mutual consent is considered to result in the discharge of obligation, then there is no reason why the revocation of a contract should also not be listed in the classification of the means for the discharge of obligation (Ghasemzadeh, 2008). Instead, revocation is only mentioned in other parts of the Iranian Civil Code, even though it is included as one of the means for the discharge of obligation in Article 1234 of the French Civil Code.

Some other important means for the discharge of obligation that have not been mentioned in Article 264 of the Iranian Civil Code include death, insanity and frustration of the act. All contracts are revocable and upon the death or insanity of one of the parties. Also, a contract with a legally under-aged person is generally void and. Thus, a contract can also be voided and the attendant obligation discharged due to death, insanity or mental incapability. Furthermore, Article 731 of the former Iranian Civil Litigation Rules (for probate matters) and described and the lapse of time as a period of time, at the expiration of which a claim can no longer be heard by a court and. Therefore, lapse of time can also be considered to be another means for the discharge of obligation. As indicated above, an agreement can also be terminated by revocation. The revocation may be done by one of the parties concerned or a third party.

Additionally, in discussing frustration of the act, Article 240 of the Iranian Civil Code provides that if after a contract has been made, it is found that the carrying out of its condition is impossible or if it becomes known that the carrying out was impossible when the contract was made, the person in whose favour the contract was drawn up will have the option of cancelling the contract. Thus, the impossibility of performing the relevant act will lead to the discharge of obligation (Ahmadi, 2007).

Condition is one of the usual legal actions whose impact is visible in contracts. For example, an illegal condition causes the nullity of a contract. Against the above backdrop, the means for the discharge of obligation which have not been mentioned in Article 264 of the Iranian Civil Code will now be evaluated more critically and a new categorisation of the means for the discharge of contractual obligations presented.

CRITICAL EVALUATION OF THE MEANS FOR THE DISCHARGE OF OBLIGATION NOT MENTIONED IN ARTICLE 264 OF THE IRANIAN CIVIL CODE

With regard to the discharge of obligation, Iranian legislators created a new classification of the means of discharge because they believed that the type of

classification found in Article 1234 of the French Civil Code was peculiar and unsuitable to Iranian law (Nouri, 2002). This innovative step led to the omission from Article 264 of the Iranian Civil Code of some means for the discharge of obligation contained in the French Civil Code. Those means of discharge are as mentioned.

The principle of revocability or irrevocability of contract is derived from a broader principle called will power sovereignty and freedom of contract (Hashemi, 2012). It is one of the principles that are completely accepted in the Iranian Civil Code (Bahrami, 1997). The principle of will power was one of the important slogans of individualism witnessed in the 18 and 19th centuries. It played an important role in legal and economic matters and Iranian legislators made an effort in codifying the law in such a way as to ensure that their local values did not place a limitation on this principle. This is evident in Articles 10 and 219 of the Iranian Civil Code concerning the principle of sovereignty and freedom of will and which were derived from Articles 6 and 1134 of the French Civil Code. There is no doubt that by revocation, a contract is terminated and the legal situation between the parties returns to its previous state. And with the termination of the contract, all the obligations resulting from it are also automatically discharged (Nahreyni, 2011). Given this explanation, it can be said that revocation is also one of the means for the discharge of obligation.

The subject matter of an obligation might be a property or an act (including performance or refraining from the performance of an act). If the property constituting the subject matter of an obligation is destroyed before its performance or the performance of the act becomes otherwise impossible, then the obligation related to that property or act is discharged. This is because logically and legally, an obligation is valid and the obligor is bound to its fulfilment only when it is possible to do so (Hammiativaghef, 2009). Therefore, the destruction of property and impossibility to perform the act forming the subject matter of an obligation (also called unexpected events) can both be considered as means for the discharge of obligation (Bagheri, 2003).

Events constituting frustration may cause the discharge of obligation, dissolution of contract or suspension of contract (Safaei, 2008). Iranian legislators could, therefore have included the destruction of property and impossibility of fulfilment of obligation in their classification of the means for the discharge of obligation under Article 264 of the Civil Code. Regrettably, they failed to do so but only discussed them sporadically in different Articles of the Code. The destruction of property is mentioned in Articles 168, 378, 493, 496, 516, 556, 614,

640, 642, 643, 649, 757 and 798 while the impossibility of fulfilment of obligation is mentioned in Articles 239 and 240 of the code.

In 1939, regulations relating to the lapse of time were introduced into the Iranian Principles of Civil Litigation from the French Principles of Civil Litigation (Roodijani, 2011). The newly introduced regulations resulted from years of experience in European judicial systems, especially that of France and were considered to be useful in the administration of judicial matters. After the 1979 Islamic Revolution in Iran, however Iranian Ulama in the Guardian Council took the view that lapse of time was inconsistent with Islam. Hence, Articles 731-769 of the Iranian Principles of Civil Litigation were declared to be contrary to Islamic law by the Islamic scholars who partly constituted the Guardian Council. Nevertheless, the researchers of this study are of the opinion that although, a search through Islamic law principles reveals that lapse of time was not consistent with what existed in Islam, it could still be accepted on the basis that it is necessary and useful for the Iranian society (Shahidi, 2011). The position is validated by the rule of which holds that an act which is ordinarily contrary to Islamic principles may be accepted, if shown to be useful to society. For example, while the consumption of certain drugs is generally forbidden, the use of such substances may be permitted on medical grounds, as where this is necessary for the alleviation of severe pain. In addition, there exist Iranian judicial verdicts which endorse the notion of lapse of time (Shahidi, 2011).

When parties to a contract have specified a certain time for their relationship, the obligation is valid until the specified time, based on customary rules. But after that specified time, the obligation will be void automatically. An obligation is a commitment due from a contract or agreement. In other words, it is the result of a contract or agreement. There is no doubt that the mainspring and final goal of all contracts is its practical achievement for both parties through the performance of its contents (the related obligation). The idea of obligation performance is also that the obligor should perform what he is responsible for legally or according to the contract, although it often happens that what is being performed is other than what the parties intended or what was written in the agreement (Shabani, 2006).

It should be noted that when the performance of the contents of a contract becomes completely impossible, then a claim for remedies cannot be made against the obligor (Samavati, 2007). Generally, however the necessity of performing an agreed obligation has been accepted as an indisputable principle in all legal systems and breach of agreement or its non-performance is considered reprehensible, leading to the payment of damages

(Nikdousti, 2003). Hence, the payment of damages can be counted as another means for the discharge of obligation (Aliabadi, 2009). The literal meaning of divorce is opening a knot and being free. In another sense, it is a special legal means for the dissolution of a marriage relationship, it means the discharge of a marriage (Damad, 2002). In almost all civilised countries of the world, divorce has the same meaning, although the conditions for its fulfilment are not the same in all countries (Emami, 1996).

According to Article 1120 of the Iranian Civil Code, a marriage may be dissolved by cancellation, divorce or waiver of the remaining period in the case of a temporary marriage (Hosseini, 2008). A temporary marriage is accepted in Shi'e Islamic law and has subsequently been reflected in the Iranian Civil Code. In light of this explanation, cancellation, divorce and waiver of the remaining period can all be considered as indirect means for the discharge of obligation (Helli, 1958).

RESOLVING THE STATED PROBLEM

The proposal for a new categorisation of the means for the discharge of contractual obligations in Iran: As has been noted in the criticism of the Iranian Civil Code, the discharge of obligation theory as conceived in Article 264 thereof is limited. This is because that notion suggests that discharge can only occur after the performance of obligation. While this is true, as in the acquisition of debt, in other cases, such as the cancellation of contract by mutual consent, release from obligation and substitution of obligation, discharge can occur before performance. The Iranian legislators by accepting only 6 means for the discharge of obligations and presenting them in Article 264 of the Civil Code have tried to present a restrictive category comprising only direct means for the discharge of obligations. Nevertheless, they were not successful in their attempt. Although, they derived Article 264 largely from Article 1234 of the French Civil Code, only 5 of the 9 means of discharge contained in the said Article 1234 were adopted to which was added the cancellation of agreement by mutual consent (adopted from Islamic law), resulting in the 6 means of discharge found in Article 264 of the Iranian Civil Code. The manner in which Iranian legislators selected and classified the means of discharge in Article 264 would later lead to confusion. Unsurprisingly, Article 264 has generated criticism from Iranian lawyers (for example, NaseerKatuzian, general theory of obligations, Mahdi Shahidi, discharge of obligations, Ali Aliabadi, creation and discharge of obligation in Islamic Law and MojtabaRudijani, discharge of obligations).

Proposed means for the discharge of obligations: Among the reasons for the criticism of Article 264 of the Iranian

Civil Code is the improper and or incomplete categorisation of the means for the discharge of obligations. Iranian legislators tended to recognise only direct means of discharge, although they simultaneously and rather confusingly, added an indirect means (the cancellation of contract by mutual consent). As observed earlier, they also failed to include other (indirect) means of discharge, such as lapse of time, revocation, destruction of the object of obligation, impossibility of obligation performance and divorce. Moreover, they made the mistake of conflating the terms, contract and obligation whereas both are completely different in meaning. An obligation is a commitment or responsibility resulting from a contract but not the contract itself. As in Islamic jurisprudence when reference is made to the cancellation of contract by mutual consent, the purpose is the cancellation of contract by mutual consent and not the obligation.

The unsuccessful categorisation of the direct means of discharge has been condemned as an unnecessary exercise. There are strong disagreements over the division of fulfilment of obligation, cancellation of contract by mutual consent, substitution of obligation and acquisition of debt into direct or indirect means of discharge of obligation (Asghari and Atghayee, 2007). Iranian legislators can bring about some improvement in the law through a new classification which accommodates all possible direct and indirect means for the discharge of obligation.

Hence in the alternative categorisation proposed by the present researchers, all the means for the discharge of obligation, including those that directly or indirectly discharge obligation are included. Inevitably, those means for the discharge of obligation which probably have only a nominal role are not mentioned. The justification for this is that they can be placed as a sub-category under the general category of the proposed means of discharge.

The acceptance of such a categorisation will assist in getting rid of the obscurities identified in Article 264 of the Iranian Civil Code. Additionally, acceptance of the means of discharge used in trade exchanges and public order regulations in today's world will help in the attainment of a framework that overcomes the imbalance and oversight observed in Article 264 of the Civil Code. As pointed out already, an obligation is a legal relationship which results in the transfer of property, the performance of an act or forbearance (Langroudi, 2010). And in the discharge of obligation, the subject of discharge is the obligation that is in a party's responsibility.

In Article 264 of the Iranian Civil Code, only 6 means for the discharge of obligation are provided. It is, however

suggested that the ambiguities and other problems emanating from this categorisation will be eliminated by the adoption of the following alternative categorisation which covers both direct and indirect means for the discharge of obligation. These means of discharge are: Performance of obligation, cancellation of contract by mutual consent, revocation, automatic termination of condition, abandonment and release from obligation, transfer, offset and recoupment; impossibility of performance of obligation, loss of the subject matter of obligation, remedies, death and insanity, lapse of time and divorce.

Performance of obligation: By accepting the performance of obligation, legislators can confirm the most usual means for the discharge of obligation because the parties have reached the results that they intended when they concluded the contract and obligation (Katouzian, 2006).

Cancellation of contract by mutual consent: Cancellation of contract by mutual consent is a contract that is dissolved with the parties mutual consent and as a result of which, the obligation is also discharged. Cancellation of contract by mutual consent completely terminates the contract and the agreement (Hashemi, 2012). The Iranian Civil Code has not provided a definition for the cancellation of contract by mutual consent. However, it is apparent that the realisation of the cancellation of contract by mutual consent requires both parties consent. Therefore, it can be said that mutual consent is necessary for the irrevocable dissolution of an agreement. Cancellation of contract by mutual consent is possible for all contracts, except marriage and pious endowment contracts which cannot be terminated by the cancellation of contract by mutual consent (Vahid, 2004). In sum, the consequences of the cancellation of contract by mutual consent are the dissolution and discharge of the related obligation.

Revocation and automatic termination condition: Revocation and automatic termination condition are means for the discharge of obligation which along with the cancellation of contract by mutual consent can strengthen Iranian law on the discharge of contractual obligations (Nahreyni, 2011). Hence, French legislators placed it in Article 1234 of their Civil Code as one of the means for the discharge of obligation. Revocation and automatic termination condition have also been completely defined and discussed in Islamic law. Revocation is the termination of the legal life of an agreement by one of the 2 parties or a third person.

Even though, the principle of revocation is not mentioned in Article 264 of the Iranian Civil Code as a

means for the discharge of obligation, it is applied in Articles 188, 219, 264, 479, 480, 523, 690, 732 and 760 of the Code dwelling on such issues as sale, lease, agriculture contracts, guarantee, draft and peace. Unilateral revocation amounts to the dissolution of a contract or obligation. It can be based on a right recognised at law or on the parties agreement and exercisable by one of them or third party. The right given to one of the contracting parties is called option, such as the option to revoke due to loss or due to defect in products (Article 396).

Abandonment and release from obligation: Release from obligation is considered as a unilateral legal act. Under Iranian law, for example release from obligation does not require the debtors will, instead it is achieved through the creditors unilateral will (Ahmadi, 2012). It occurs when a creditor voluntarily waives his claim. Release from obligation is only effective when a party to the contract has the power to terminate it (Yazdani-Sudjani, 2002).

Transfer: The evolution of legal systems that respect human will and the necessity for the establishment of order in social relationships have led to the replacement of old models with modern ones for regulation and the administration of justice. Transfer is one of those new models and can be used instead of substitution of obligation. In addition, it is applicable in cases relating to draft, liability, bill of exchange and trade contract papers.

In Iranian law, transfer of obligation is endorsed in Article 38 of the Insolvency Law which was passed in 1934. Debt transfer is also permitted under Article 17 of the Insurance Law which was passed in 1937 (Tavakolikermani, 2010). The meaning of transfer includes, a legal and legitimate relationship that links the debtor and creditor and leads to the transfer of the obligation (credit and debt) with all its qualities, characteristics and guarantees. Transfer of obligation is sometimes compulsory and at other times, voluntary. Death is the source of a compulsory transfer while will is the source of a voluntary transfer (Shoarian, 2009).

Offset and recoupment: Offset and recoupment is also one of the means for the discharge of obligation. It may be compulsory, contractual or judicial. Offset and recoupment can be defined as the mutual discharge of 2 debts owed by 2 persons to each other (Roodijani, 2011). Today, offset and recoupment is the basis for many of the trade exchanges that take place in banks and it is of course, considered a means for the discharge of obligation and it is of course, considered a means for the discharge of obligation.

Impossibility of obligation performance: Impossibility of obligation performance is also one of the means for the discharge of obligation. It leads to the release of an obligor from the performance of the obligation owed to the obligee. The impossibility of obligation performance could be due to law, as where the transport of merchandise becomes prohibited or due to the occurrence of natural events, such as war, earthquake and flood (Shahidi, 2009). In any case, if an obligation becomes impossible due, for example to operation of law or the act of a third party that would lead to its discharge. But if the impossibility of an obligation is caused by the action of the obligor, it would lead to the payment of compensation for the resulting damage.

Destruction of the subject matter of obligation: Destruction of the subject matter of obligation is another means for the discharge of obligation. If the subject matter of an obligation is destroyed without fault, then the obligor is not responsible for any damages. Several articles of the Iranian Civil Code also refer to the destruction of the subject matter of obligation and consider this to be a means for the discharge of obligation. These include Articles 387 (regarding sale), 496 (rent contract), 649 (loan), 416 (option of lesion), 798 about donation and temporary safe conduct and possession trust and 614 (engagements of the trustee) and 640 (lending). If the destruction of the subject matter of obligation is without fault on the part of the obligor, he would not be liable but in case of fault, he would be liable to pay the equivalent or its actual price (Aliabadi, 2009).

Remedies: The allocation of remedies is based on the assumption of a breach of obligation performance. Doubtless, the main motive and ultimate goal of all contracts is the practical attainment of its contents for the parties to the related obligation refers to the Articles 221, 227 and 229 of Iranian Civil Code. Furthermore, the performance of obligation means that the obligor must perform his responsibility according to law or based on the contract. The performance of obligation is sometimes done through the transfer of rights, the surrender of property, the performance of an act or forbearance. When the obligor refuses to fulfil his obligation, the obligee has the right to claim remedies before a court of law (Shabani, 2006).

Often, damage could be the result of a delay in the performance of an obligation and at other times, it could be due to the obligor's refusal to perform the obligation. It should be mentioned that when all the means for the performance of an obligation are closed, the only option

left, in lieu of obligation performance is the vindication of damages and with the payment of damages, the obligation is terminated. Thus, remedies can be counted as another means for the discharge of obligation. It is worth noting that in Iranian law, discharge of obligation does not occur by reason of the obligors breach or default. But discharge of obligation is effectuated through the payment of damages by the obligor.

Death and insanity: Usually, an obligation is not dependent on the character and of the contracting parties and there is the possibility to transfer it upon death. Nevertheless, an obligation sometimes depends on the character of one of the 2 contracting parties. In such a case, the death or insanity of that party will result in the dissolution of the contract and the discharge of obligation. For example, when a person is obliged to work for an employer, the death of that person will lead to the dissolution of the employment contract and the discharge of obligation. The employer cannot ask the heirs of the deceased to work for him in place of the deceased (Damad, 2002). According to Article 954 of the Iranian Civil Code, all optional contracts, such as delegation contracts are terminated by the death of one of the parties. Therefore, death and insanity can be considered as 2 additional means for the discharge of obligation.

Lapse of time: Lapse of time as provided in the Iranian Civil Code was derived from French law. In the 11th section of Articles 731-769 of the Iranian Principles of Civil Litigation, Iranian legislators had recognised the usefulness of lapse of time and it was enforced in the country for half a century. However because of the Guardian Councils, subsequent objection to the principle on the premise that it is inconsistent with Islamic law it is no longer used in Iranian civil legislation.

Lapse of time means the passage of a time duration specified by law after which a claim can no longer be heard by a court of law. According to what has been discussed in Islamic legal texts, secondary commandments, social interest and public order may have been the basis for some legal Articles, such as Articles 731-769 of the Iranian Principles of Civil Litigation (Shahidi, 2011). Without doubt, lapse of time is a useful judicial tool for the organisation of legal relations and the administration of justice in the Iranian society. Therefore, it can be considered as one of the means for the discharge of obligation. Also, in some penal orders under Iranian law, lapse of time is still officially recognised and enforced and some criminal charges, such as theft and criminal defamation can be barred by lapse of time (Roodijani, 2011).

Divorce: In Islamic law, divorce is considered as a unilateral legal act. This is because it is basically one-sided only the husband or his attorney can bring it about by simply announcing it. Divorce means the dissolution of a permanent contract (Sobhani, 2010). Cancellation, divorce and waiver of the remaining period of a temporary marriage are all unilateral legal acts which are considered as means for the discharge of obligation under Islamic law (Damad, 2002). Articles 1120-1156 of the Iranian Civil Code are assigned to the dissolution of marriage contracts.

What has been presented here, thus far is a collection of direct and indirect means for the discharge of obligations in Iran. Through this new categorisation, a widely acceptable meaning of discharge of obligation can be obtained.

The proposal for lack of definitions: In Iranian law, all contracts are governed by general principles, such as those determining the formation of a contract (Shahidi, 2009). From a simple glance at everyday life, different samples of contracts, such as purchase of a house or car, the rent of a store or accident insurance can be seen. This variety of contracts can be found in the Iranian Civil Code, broadly speaking. The real focus of the Civil Code is contracts. Intention, offer and acceptance are some of the conditions for concluding a contract. Every person is free to conclude a contract provided they comply with Article 190 of the Iranian Civil Code.

In legal systems based on the written law, legislators attempt to formulate and present a codified law on the basis of which judicial authorities can issue a command, sentence an offender or exonerate an innocent person. In Roman-Germanic law, the best approach for a fair resolution of disputes is by relying on codified rules and regulations. In this system, the role of codified law and general principles is very important for human conduct, the fair performance of contractual obligations and the administration of justice. Equally in Islamic law, social relations are governed on the basis of written law (Farshadi, 1981). Therefore, societies have attempted to come up with a set of distinct, apparent and comprehensive concepts for different subjects in order to avoid ambiguities. An Islamic intellectual, such as Mir seyed Sharif-e Jorjani whose method of writing is similar to that of Socrates, the Greek philosopher has analysed and emphasised the importance of providing definitions in his book, *Al hodud and Al taarifat*.

Iranian legislators enumerated 6 means for the discharge of obligation in Article 264 of the Civil Code. However, among those 6 means only one, release from an obligation is defined. There are no definitions for the

other means for the discharge of obligation namely, fulfilment of an obligation, cancellation of contract by mutual consent, substitution of an obligation, offset and acquisition of debt (Bigdeli, 2012). This omission on the part of the legislators has created a number of difficulties.

In this study, an effort is made to minimise the existing ambiguities in Article 264 of the Iranian Civil Code and to provide a more effective contract law and in Iran by proposing a clear and comprehensive set of definitions. Each means for the discharge of obligation in the said Article 264 could be defined as follows.

Fulfilment of an obligation: The lexical meaning of fulfilment is to perform and accomplish a promise (Javanmardi, 2001). But in technical and terms, it means an obligor acting in accordance with an obligation. The fulfilment of an obligation is the most common means for the discharge of obligation because in this way, the parties receive what they expected from concluding the relevant contract (Shahidi, 2009).

Cancellation of contract by mutual consent: In lexical terms, this means to open, to liberate it is the discharge of agreement to the satisfaction of both parties. In technical terms, it refers to the revocation of agreement by both parties (Langroudi, 2008). On another view, cancellation of contract by mutual consent is a bilateral termination of contract (Gharamaleki and Ghasemi, 2010).

Release from an obligation: This term has been defined by the legislators and according to Article 264 of the Civil Code, it is the voluntary waiver by a creditor of his claim. In lexical terms, release from an obligation means to be freed and to be released. In other words, it occurs when the creditor gives up his claim.

Substitution of an obligation: Lexically, this means to change and to alter. Technically, it is the discharge of an obligation through the means of another obligation. The substitution of an obligation may be by way of changing a debtor, creditor or right.

Offset: This is discussed in Articles 294-299 of the Iranian Civil Code but there is no definition for it. Literally, offset means the equity of debts and in technical terms, it means the discharge of debts owed by 2 debtors to each other (Hashemi, 2003).

Acquisition of debt: This is mentioned in the Iranian Civil Code as one of the means for the discharge of obligation.

Article 300 of the Code dwells on the acquisition of debt. Literally, obligation means responsibility and liability. In technical terms, it means the integration of the titles of debtor and creditor in one person for a debt. It should be mentioned that in the Iranian Civil Code, the meaning of discharge of obligation is not the failure to fulfil an obligation. Rather, it means the termination of an obligation.

CONCLUSION

The most important legal effect of a contract is obligation. This is considered to be the most significant subject in the Civil Code. By studying issues relating to obligation, one can learn how rights and contractual responsibilities are formed, how they continue their existence and finally how they leave the world of law through discharge.

Although, an obligation is created in hopes of its realisation, it does not last forever. It may be discharged after its creation due to different causes. Discharge is the destiny of every contract. Sometimes, a contract is discharged before its performance. Iranian legislators assigned Article 264 of the Civil Code to the means by which an obligation may be discharged and have explained those means in Articles 264-300. In drafting Article 264, Iranian legislators imitated Article 1234 of the French Civil Code but did so rather imperfectly. This is because they tried to follow French law with regard to form but in respect of content, they acted independently, largely in accordance with Islamic law. Thus, in terms of content, the Code is partly Islamic law. Although, this was an innovative step on the part of the Iranian legislators, it unfortunately resulted in the ambiguities and related problems already highlighted in this discussion. Consequently, Article 264 of the code has provoked critical comments by Iranian legal experts, some of whom were mentioned earlier.

Some of the problems identified include the absence of definitions for five of the 6 means for the discharge of obligation provided in Article 264. Others are ambiguities, unsuitable classification and lack of proper fit between Islamic law and the French Civil Code. The stated form of Article 264 of Iranian Civil Code which is based on the theory of discharge of obligation is imperfect because it fails to include all the possible means for the discharge of obligation in 1 categorisation. This article has tried to fashion solutions for these problems by offering an alternative categorisation of the means for the discharge of obligation that comprises all possible direct and

indirect means of discharge. In order to eliminate the ambiguities contained in the said Article 264, new definitions have also been proffered.

Iranian legislators have not mentioned revocation, destruction of the object of obligation, impossibility of obligation performance, lapse of time, expiration of duration in time-sensitive obligations, damages and divorce in Article 264 because of their special form of classification. Perhaps, the reason why the above means of discharge were not mentioned in Article 264, even though they are just as useful as the other 6 mentioned there in is that Iranian legislators had decided a priori on the categorisation made in that article. They provided for only those means that directly lead to the discharge of obligation while leaving out other indirect means in order to prevent ambiguities and difficulties for the functioning of Iranian courts and in particular, their attainment of verdicts. As it were, court verdicts are founded on legal provisions.

Nevertheless in order to address the problems that have arisen from Article 264, an alternative categorisation of the means for the discharge of obligation has been presented by the present researcher. This categorisation is one which contains both direct and indirect means for the discharge of obligation. Such means are:

- Performance of obligation
- Cancellation of contract by mutual consent
- Revocation and automatic termination condition
- Release and abandonment from obligation
- Transfer
- Offset and recoupment
- Impossibility of obligation performance
- Loss of obligation subject matter
- Remedies
- Death and insanity
- Lapse of time
- Divorce

It is believed that the acceptance of this categorisation will assist greatly in eliminating the problems associated with the form and of Article 264 of the Iranian Civil Code. Similarly, the definitions proffered for 5 of the means of discharge contained in that study will help to get rid of the existing ambiguities.

This study has attempted to reform Article 264 of the Iranian Civil Code by analysing and highlighting its shortcomings, as well as proposing a new classification of the means for the discharge of obligation. It has also criticised the inappropriate combination of Islamic and Roman-Germanic laws and drawn attention to the defects of such an approach.

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