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Comparative Study the Impact of Changes in the Leased Object on the Status of the Lease Contract in Imami Jurisprudence, Afghan Law, and French Law

Mohammad Javad Arasta[1]; Sayed Azizullah Mousavi[2]

[1]Associate Professor of Public and International Law, University of Tehran, Iran

[2] PhD. Student of private law at Al-Mustafa International University, Qom, Iran.

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Abstract

In the lease contract of objects, if the leased object undergoes a substantial change or a significant change in its characteristics before it is delivered to the tenant, the lease contract is void. This is because the existing object is different from what was the subject of the transaction and what was agreed upon. However, if the object undergoes a substantial or qualitative change during the lease term, there are similarities and differences between Imami jurisprudence, Afghan law, and French law. For example, if the change occurs at the beginning of the lease contract and the delivery of the leased object, according to Imami jurisprudence, it is considered as a change before delivery and the contract is void. However, in Afghan and French law, there is no distinction between the beginning and the duration of the lease contract. However, if the change occurs during the lease term, Imami jurisprudence provides different rulings depending on the type and cause of the change, such as the validity, voidness, suspension, and termination of the contract. Afghan law also, depending on the case, considers the rulings of the continuation and persistence, dissolution, and conditional suspension of the contract, and French law provides for the termination of the contract in case of a substantial change caused by force majeure, but in other cases, it rules for the continuation and persistence of the contract.

Keywords: *Change of the Object of the Transaction; Change of the Leased Object; Status and Validity of the Contract; Substantial Change of the Object; Qualitative Change of the Object*

1. The Concept of Contract Validity

In the context of the legal nature of "contract validity", it is necessary to briefly define the two terms "validity" and "contract" and then explain the meaning of the phrase "contract validity".

1) Validity: The verbal noun of the verb is noun of. In lexicography, it has been used in various meanings, including: taking a lesson, pondering, learning a lesson, reputation, value, worth, position, trust, confidence, truth, correctness (Moein, 1386, 1: 300), importance, etc. Having validity means having value and importance, being reliable and trustworthy (Anvari, 1382, 1: 659).

In the terminology of Islamic jurisprudence and contract law, validity refers to value, importance, and enforceability. Therefore, when in Islamic jurisprudence and law we talk about the validity and invalidity of a rule or contract, it means whether that rule or contract is reliable and has importance, value, and legal effects. On the other hand, if a contract is considered invalid, it means that it will not have any legal effects.

2) Contract: In lexicography, it has been used in various meanings such as promise, condition, covenant (Dehkhoda, 1373, 10: 15419), pledge, determination, decision, rule, law, etc. (Anvari, 1393, 6: 5510). The word contract from an etymological point of view is a derived noun adjective of the object that is derived from the word meaning stability and making a, firmness and sustainability, and also pledge, condition, promise, and emphasis. The word is also common in the Arabic language, but the word is a Persian word and is only used in Persian literature (Mohaqeq Damad, 1389, 1: 112). In Arabic, the word is used instead of (Ahmadi Bahrami, 1390, 49).

In legal terms, the meaning of contract has not strayed from its lexical meaning and is synonymous with contract in the sense of connecting one agreement to another or the relationship between two contractual (Mohaqeq Damad, 1389, 1: 112). As it has been stated in some lexicography books, contract is defined as "an obligation, usually written, based on which two or more natural or legal persons consider duties and rights towards each other" (Anvari, 1393, 6: 5510).

3) Contract Validity: It means having value, being reliable, and the enforceability of the terms of the contract. In this article, "contract validity" is discussed for a specific reason: if the object of the transaction changes during the transaction from the time of the contract formation until its delivery or even after its delivery, what effect does it have on the contract? Does the contract in question remain legally valuable, or does the change in the object of the transaction disrupt the foundation of the contract in such a way that either the contract is not formed at all, or if it is formed, after the change in that object, the contract becomes void, rescinded, or unstable, or remains in its original state? In other words, the meaning of contract validity is the "contract status" which sometimes changes its nature due to the change in the object, from revocability to irrevocability or vice versa, or from stability to instability, or from continuation to discontinuation, etc.

2. The Concept of Object Change

To explain the concept of "object change", it is necessary to first define each of the two words "change" and "object" and then explain the combined meaning of these two words. Finally, the meaning of "object change" in contracts should be clarified.

1) Change: The verbal noun of the intensive verb form and from the three-letter root is. In lexicography books, many meanings have been mentioned for, including: conversion and delivery (Qarshi, 1371, 5: 138), transformation and transfer (Tarihi, 1416, 3: 432), changing to another form, transforming, changing from one state to another, transforming and changing, changing (Anvari, 1382, 3: 1802). Some have said: is of two types: 1) Change in the form of an object without changing its essence. For example, when you say:, it means that you built a building different from what it was. 2) Change in the sense of converting to something else. Like, meaning I changed my slave and beast. Like the verse of the Quran: « :إِنَّ اللَّهَ لا يُغَيِّرُ ما بِقَوْمٍ حَتَّى يُغَيِّرُوا ما بِأَنْفُسِهِمْ God will not change us as a nation until they change us in themselves» (Raad/11) (Ragheb, 1412: 619).

It seems that the main meaning of is transformation and changing, and changing or bringing from one state to another. Meanings such as conversion, transfer, exchange, etc. are among its customary instances and are usually more specific than. In other words, or transformation is any secondary state relative to the initial state of an object.

However, in terminology, to accurately explain the terminological meaning of, it is necessary to first consider the two words transformation and revolution, because these two terms are used in Islamic jurisprudence and law to mean change and are also used in various jurisprudential chapters.

Transformation: In lexicography, it means to transform, to change, to transform, and to change (Anvari, 1382, 1: 365). In terminology of jurisprudence, it has been defined as: "the conversion of the reality of an object and its specific and customary form to another specific form" (Tabatabaei Yazdi, 1409, 1: 132). It has also been said: is the transformation of an object from one state to another in such a way that it is considered another object, such as when wood burns and turns to ash, or the corpse of a dead dog after a long period of time in salt turns to salt" (Musavi Khomeini, 1404, 247).

Revolution: In lexicography, it means to be turned upside down, to change state, to transform, etc. (Anvari, 1382, 1: 629). In terminology of jurisprudence, it is used in a more specific sense than its lexical meaning. In lexicography, any kind of transformation is called, but jurists only refer to the "transformation and change of one liquid to another" (Hashemi Shahroudi, 1382, 1: 708), specifically in the case of the conversion of wine to vinegar, as.

As it has been said: "There are two views on the difference between Revolution and Transformation. Some have considered Revolution as merely a change of name without a change in the reality of the specific type, unlike Transformation, in which the essence of the object changes. Therefore, the conversion of wine to vinegar is not Transformation. Others consider Revolution to be a level of Transformation and believe that Revolution is also a change and transformation of one essence to another - such as the conversion of wine to vinegar, which are two different realities and essences with different effects - but the subject of Revolution in jurisprudence is specifically the transformation of wine to vinegar, while the subject of Transformation is more general" (Hashemi Shahroudi, 1382, 1: 708).

Therefore, in both cases, whether we consider Revolution to be different from Transformation or a level of Revolution ,Transformation is more specific and an instance of Change. However, if Transformation does not include Revolution, it will certainly have a more specific meaning than Change because at least one instance of Change is excluded from its scope. But if it includes Revolution, if the word Transformation can be used for any kind of transformation of objects, it is synonymous with Change, and otherwise it is an instance of Change.

Therefore, Change is a general concept that applies to any kind of transformation of objects. To be more precise, " Change is the transfer of an object from one state to another" (Musavi Qazvini, 1424, 1: 86), which sometimes occurs in the reality and essence and sometimes in the names and attributes of objects.

2) Object: The word object is an ambiguous concept, yet it is the most key word in this article. Therefore, in order to clarify it as much as possible, it is necessary to briefly explain its lexical and terminological meanings.

In lexicography, object means "thing" and anything that can be talked about, especially an inanimate material body (Anvari, 1382, 5: 4628). It can also be any sensible being, such as bodies or judgments, like sayings, for example I said something (Maqri Fiumi, n.d., 2: 330).

Object is also something that is known and reported. According to most theologians, object is a shared meaning that applies to God Almighty and other than Him, as well as to existing and non-existing phenomena. However, according to some theologians, object refers to existing phenomena (Ragheb, 1412: 471).

It has also been said that object applies to anything that is desirable. Therefore, it includes the Necessary Being which is desired by every being, and all possible beings, whether known, created, or

potential. Therefore, object applies to any desired subject, judgment, or action (Mostafavi, 1402, 6: 155).Therefore, object is the most general and comprehensive name that applies to both existing and non-existing. Therefore, God Almighty has used the word object even for the non-existing before it comes into existence, and has said**: «وَ لا تَقُولَنَّ لِشَيْءٍ إِنِّي فاعِلٌ ذلِكَ غَداً»:** And do not say about anything, 'Indeed, I will do that tomorrow »(Al-Kahf/23) (Hamidi, 1420, 1: 3594).

In terminology, some jurists have considered object in the terminology of civil law to be specific to movable assets and have said: object refers to movable assets of property. In the same legal sense, the word thing is used in Persian, and in French it is called chose, which is in fact the same word that is also used in Persian" (Jafari Langoordi, 1391, 3: 2324).

It seems that this statement is not accurate, because from the cases of usage of object it is understood that in civil law the word object is general of both movable assets and immovable assets. For example, jurists have said in the chapter of will: "If someone bequeaths something of his property to another, one sixth of his property will be given to him" (Najfi, 1404, 28: 321). It is clear that one sixth of the property can be movable or immovable property. Also in the chapter of admission, it has been said: "If someone admits with an ambiguous word such as object, his admission is valid; but he is obliged to interpret it" (Najfi, 1404, 4: 144).

Therefore, object is true of both movable assets and immovable assets. Therefore, if someone admits and explains that he meant "house", "land", "garden", etc. by object, his words will be accepted and no one can claim that the word object in civil law is specific to movable assets and consider the admission and explanation of the admitter to be invalid.

3) Change of Object: As mentioned before, change of object means the transformation and change of an object. In contract law, object is used synonymously with property, and in this article, object refers to the specific and external object (the subject of the transaction). Therefore, when we talk about the change of object, it means that the goods subject of the transaction change in such a way that causes a decrease or increase in the price of that object.

Of course, it should be noted that change is not necessarily meant in the exact rational sense. Rather, as some jurists have stated to: change is one of the customary concepts that is either felt with the conscience, such as when someone says my state has changed with respect to his own state, or it is perceived with one of the five senses, such as when someone says the food or meat has changed with respect to the objects around him. The common denominator of these is that an customary discrepancy occurs between the initial and secondary state of the object" (Sabzevari, 1413, 1: 146).

3. Relationship between Change of Object and Destruction of Object

In some cases, change of object and destruction of object are different, and in some cases they overlap.

a) Difference between Change and Destruction of Object: Change of object is different from destruction of object. Change refers to the transfer of an object from one state to another (Musavi Qazvini, 1424, 1: 86), while destruction of object means the ruin and destruction of an object (Hashemi Shahroudi, 1385, 2: 615). Therefore, change of object occurs when the essence or attributes of an object change, but the substance and main material of that object are not destroyed. In the case of change, the object is not completely annihilated, but with the change of essence or attributes of the object, its benefit is decreased or increased. However, destruction of object occurs when the object is completely destroyed and nothing remains to cause an increase or decrease in benefit.

b) Common Ground between these two concepts: The common ground between these two concepts is where there is partial destruction, in which case both destruction of object and change of

object apply. For example, if the tail of an animal is destroyed, it is considered a destruction because one of the body parts of the animal is destroyed. On the other hand, it is also a change of object because it creates a defect in the composite form of the animal.

Therefore, the relationship between change and destruction of object is general and specific from some aspects. In other words, not every change is destruction, and not every destruction is change. However, in some cases and instances, both destruction and change apply.

4. Types of Change of Object

In general, changing the object happens in two ways, which are discussed below:

4.1. Effect of Change in the Essence of the Object on the Validity of the Contract

If the object of the contract changes after it is delivered to the other party to the contract, and the change is such that the essence of the object is completely changed, the status of the contract from the perspective of Imami jurisprudence, Afghan law and French law is as follows:

4.1.1. Imami Jurisprudence

In Imami jurisprudence, the ruling on the essential change of an object can be studied within the framework of the complete destruction of the object of the lease. Imami jurists have made a distinction between the case where the object is destroyed immediately after its possession by the tenant and the case where it is destroyed during the lease period. They have considered the first case to be the same as destruction before possession and a cause for the invalidity of the contract (Asadi Hilli, 1413 AH, 2: 283). However, regarding the second case, they have made the following distinctions based on the causes of destruction:

1) Invalidity of the Contract: If the object of the lease is destroyed by natural and accidental events such as fire, earthquake, etc., according to the majority of jurists, it will lead to the invalidity of the lease contract (Tabatabaei Yazdi, 1409, 2: 593). This is because the continuation of the lease contract is conditional on the continuation of its subject matter (Eshtehardi, 1417 AH, 27: 112). Since in lease, the benefit is obtained gradually, from the moment the object of the lease becomes unusable, the lease contract becomes invalid due to the lack of subject matter (Mousavi Bujnordi, 1419 AH, 7: 129). In this case, the destruction of the object is the responsibility of the lessor because the possession of the tenant over the leased object is custodial possession and he/she is not responsible in any way unless there is transgression or negligence.

2) Validity and Continuation of the Contract: If the object of the lease is destroyed by the tenant (i.e. undergoes an essential change), the lease contract remains valid and the tenant is obliged to pay the rent to the lessor and also to return the price or equivalent of the destroyed object to the lessor by the end of the contract (Bahrani, 1413 AH, 4: 290 and Najafi, 1427: 165). Additionally, if the leased object is destroyed by a third party, the contract remains in force and the person who caused the destruction must provide the value of the benefit to the tenant and the price or equivalent of the leased object to the lessor (Bihari, 1413 AH, 4: 291). This is because the lessor has fulfilled his/her duty by delivering the leased object to the tenant in the same condition as it was at the time of the contract and has no further responsibility for it after the delivery. Therefore, if a house is rented and the tenant takes possession of it, and then due to the transgression or negligence of the tenant or a third party, the house is burnt down or destroyed, the lease contract remains valid and the responsibility for the damage lies with the tenant or the third party.

3) Uncertainty of the Contract (Right of Option): If the leased object is destroyed by the lessor, the tenant has the option of either: Termination) of the Contract and Claiming the Agreed Rent: The reason for the right of termination is that the delivery of the leased object and its retention with the tenant are among the implied and implicit conditions of the lease contract. The destruction of the object by the lessor is a breach of the condition of retention of the object with the tenant. Acceptance of the Contract and Requesting) the Equivalent of Lost Benefits): The reason for the right to demand the equivalent of lost benefits is that the lessor has destroyed the benefits that belonged to the tenant based on a valid contract and is therefore liable according to the rule of destruction.

4) Rescission or Invalidity of the Contract: Some jurists consider the mere destruction of the object, regardless of its causes, to be a cause for invalidity of the contract (Tabatabaei Yazdi, 1422: 826), while others consider it to be a cause for rescission of the lease contract (Mousavi Bujnordi, 1419, 7: 129).

It seems that this view is not accurate in absolute terms. This is because the invalidity or rescission of the contract in case of the destruction of the object by the tenant or a third party, even after its delivery to the tenant, will cause loss and damage to the lessor. According to the rule of no harm, the lessor is not required to bear such a loss. Therefore, the more accurate view is the same as the opinion that distinguishes between the causes of destruction. If the leased object is destroyed by the tenant or a third party, the lease contract remains valid and the person who caused the destruction is obliged to pay the agreed rent and is also liable for the destroyed object.

4.1.2. Afghan Law

The Afghan Civil Code considers the essential change of the leased object to be a cause for the rescission of the contract. Article 1354, paragraph 1 states: "If the leased object is completely destroyed during the lease period, the lease will be automatically rescinded." From the context of this article, it seems that the word termination is either a typo or a translation error. The intended word should be rescission because: Firstly, it is inconsistent with the phrase the lease will be automatically.... termination does not happen automatically; it is done by one of the parties to the contract or by a third party. Secondly, the aforementioned paragraph is a direct translation of Article 569, paragraph 1 of the Egyptian Civil Code, where the Egyptian legislator uses the word rescission and states: If the leased object is completely destroyed during the lease period, the contract will be rescinded automatically.

In any case, it can be inferred from the generality of the aforementioned article that the mere destruction and annihilation of the leased object leads to the rescission of the contract. It does not matter whether this destruction occurs due to the fault of the tenant, a third party, the lessor, or a natural disaster (Sanhuri, n.d., 6: 285). This is because, in any case, when the leased object is destroyed, the implementation and execution of the lease contract becomes impossible. Therefore, there is no option but to rescind the contract (ibid.).

In Hanafi jurisprudence, there are two theories regarding the destruction and annihilation (Change in the Essence of the Object) of the leased object. The first view, which is also the basis of the Afghan Civil Code, is that the lease contract is rescinded by the mere destruction of the leased object. However, the other view, which is known as the more correct opinion, is that the lease is not rescinded, but the tenant is given the right to terminate the contract... (Zahili, 1405 AH, 4: 753-754).

4.1.3. French Law

According to French law, if the change in the object (leased object) is caused by unforeseen events, the contract is rescinded. Article 1722 of the French Civil Code states: "If, during the lease period, the leased object is completely destroyed by an unforeseen event, the lease is completely rescinded."

French law does not explicitly state anything about the status of the contract in cases where the destruction occurs due to the lessor, the tenant, or a third party. However, it can be inferred from the following: Firstly, from the abovementioned provision, which states that the lease is rescinded in case of natural destruction. Secondly, from the spirit governing contracts in French law, that the contract remains valid. This is because in other cases, if the law intended to rescind the contract, it would have mentioned it. Since it has not mentioned it, according to the principle of the continuation of contracts, in case of destruction due to reasons other than force majeure, the contract remains in effect. This is because once a contract is validly concluded, the destruction of the object of the transaction does not lead to its invalidity or rescission. Instead, based on the rule of destruction, the person who caused the destruction will be liable for the object and the lost benefit.

Based on this, if the person who caused the destruction is the lessor, in addition to being responsible for the destruction of the object, he/she must also compensate the tenant for the lost benefits. This means that he/she must return the rent to the tenant if he/she has received it. If the lost benefits are more than the agreed rent, he/she must pay the tenant the additional amount.

If the leased object is destroyed due to the transgression and negligence of the tenant, he/she is obliged to pay the rent to the lessor according to the contract, even if he/she has not paid it yet. In addition, he/she must also compensate for the damage to the destroyed object. However, if the person who caused the destruction is a third party, he/she must compensate the lessor for the destroyed object and the tenant for the lost benefits.

4.2. The Effect of Descriptive Change of an Object on the Validity of a Contract

If the object of the transaction undergoes a descriptive change after it is delivered to the tenant, such that the leased object either suffers partial destruction or becomes defective (Sanhuri, n.d., 6: 287), and as a result, the benefit of the tenant is reduced, the status of the contract in Imami jurisprudence, Afghan law, and French law is as follows:

4.2.1. Imami Jurisprudence

The descriptive change of an object can be discussed within the context of the leased object becoming defective or suffering partial destruction. In this regard, the defect that occurs on the leased object can be categorized into several types: Sometimes the defect is such that a part of the leased object becomes unusable, such as the damage of some of the rooms in a rented house**.** Sometimes the defect is not such that something is reduced from the leased object, but it is such that it causes a reduction in the benefit. For example, a person rents an animal to travel with it, but the animal, due to an injury, cannot move quickly and cannot reach the destination of the tenant at the desired time. Sometimes the defect is such that it neither prevents use nor reduces benefit, but the rent of such a defective object is, in the view of the custom and rationally, less than that of a healthy object. For example, a rented animal has a cut tail or ear (Hosseini Shirazi, 1414, 57: 178).

1) Uncertainty) of the Contract: The majority of Imami jurists believe that the mere occurrence of an defect gives the tenant the right to option, whether the defect occurs before or after the possession. The generality of the jurists' statements includes all three types of defect mentioned above. However, since each of the mentioned defects has its own specific reasons, the reasons for each one will be discussed separately below:

First Case: If the defect that occurs on the leased object is such as the damage of some of the rooms in a residential house (partial destruction), the lease is invalidated with respect to the damaged portion and the tenant has the option of partial rescission with respect to the rest. (Tabatabaei Yazdi, 1417, 2: 591). This is because in such a case, the leased object has not been completely delivered to the tenant and as a result, the tenant cannot fully utilize the benefits. While the original contract was for the

entire object. Therefore, the tenant has the right to either accept the existing portion or rescind the contract due to the partial rescission. (Mousavi Khu'i, 1417, 30: 177).

Second Case: If the defect does not reduce the leased object but only causes a reduction in the benefit, the tenant has the option of either rescinding or upholding the contract. This ruling has not only not been challenged, but some jurists have even claimed that there is no disagreement on it. As some jurists have stated, to prove this issue, one can rely on both the rule of no harm and the option of breach of condition. This is because if the tenant is forced to accept the contract while the intended benefits are completely unavailable, he/she will definitely suffer a loss. However, according to the rule of no harm, the tenant is not required to bear such a loss. Furthermore, in case of becoming defective, the leased object loses the condition of soundness. With the loss of the condition of soundness, the tenant has the option of breach of condition. (Hosseini Shirazi, 1414, 57: 179). In other words, in the context of lease, based on the implied condition, the leased object must be delivered to the tenant in a sound and healthy condition both at the time of delivery and continuously thereafter. Whenever it becomes defective, the tenant has the right to option of breach of condition. (Mousavi Khu'i, 1417, 30: 149).

Explanation of the Matter: In the context of lease, it is important to note that: Firstly, the leased object remains in the ownership of the lessor and only the benefits of it are transferred to the tenant. Secondly, the subject matter of the lease contract, based on the implied condition, is a sound object that has the capacity for the desired and intended benefit. Thirdly, the benefits are obtained gradually, therefore the leased object must remain free from defect until the end of the lease period in order for the intended benefits to be realized. Therefore, whenever the leased object becomes defective, the option of breach of condition is established.

Third Case: If the defect of the leased object does not cause a reduction in its benefit, but the customary and rational desire and inclination distinguishes between the sound and defective objects, it gives the tenant the option of breach of condition. This is because even though the defective object has not changed in terms of benefit, the mere fact that it has declined in terms of rational desire or rental value is sufficient to establish the option of breach of condition. (Kempani Isfahani, 1409: 269).

The above discussion was regarding cases where the cause of the destruction and defect was force majeure, the lessor, or a third party. However, regarding the case where the partial destruction and defect are caused by the tenant, there are different probabilities regarding whether the tenant has the right to option or not, which have been discussed by some jurists (Hosseini Shirazi, 1414, 57: 184). These probabilities are:

1)The tenant has the option, because the leased object has become defective in any case and therefore falls under the evidences of option.

2)The tenant does not have the option, because the evidences of option, such as the tradition of no harm and breach of condition, do not apply to this case since the tenant himself/herself has caused the harm and has taken the leased object out of the state of soundness. There is no option for the person who acts against his/her own interests.

3)If the tenant has intentionally caused the destruction or defect, he/she does not have the option because he/she has acted against his/her own interests and there is no option for the person who acts against his/her own interests. However, if he/she has caused the leased object to become defective or destroyed due to error and negligence, he/she will be covered by the evidences of option.

2) Conditional Uncertainty of the Contract: In contrast to the majority view, some jurists have argued that it is difficult to establish the option for the tenant simply because of the occurrence of an defect. However, if the following two conditions are met, the tenant will have the option to rescind the

contract: Firstly, the defect must hinder the benefit or make it difficult to use the leased object. Secondly, the lessor not take any action to repair it. Then the lessee has the right to terminate the contract (Tabatabaei Yazdi, 1430, 5:33). Therefore, if the defect does not cause a reduction in the benefit or the lessor repairs the defect, the tenant will not have the right to option and the lease contract will remain in force.

Although this view is more in line with the principle of the necessity and continuation of contracts, it cannot be accepted for the following reasons: Firstly, the majority of Imami jurists believe in the uncertainty of the contract and the right of rescission for the tenant. Disagreeing with the majority view, without very strong and convincing reasons, is not desirable. Secondly, the majority view is based on strong and almost unassailable arguments.

2-2. Afghan Law

Afghan law recognizes the effect of changes in an object on the validity and status of a contract. Article 1354 of the Afghan Civil Code states: "If part of the object is destroyed or the object is in a state that it does not have the capacity for the intended benefit from the lease contract, or there is a major defect in the benefit, and the tenant has not been negligent, and the lessor does not restore it to its original state within a reasonable time, the tenant can, depending on the circumstances, demand a reduction in rent or rescission of the lease, without prejudice to his/her right to take action to repair and correct it in accordance with the provision of Article 1352 of this law. In both of the above cases, if the lessor has not been negligent in the destruction or damage of the object, the tenant cannot demand compensation." (Paragraphs 2 and 3 of Article 1354 of the Afghan Civil Code and Paragraphs 2 and 3 of Article 569 of the Egyptian Civil Code). This article discusses the different scenarios based on the causes of the defect and destruction in a mixed manner. It is necessary to separate them from each other and explain the ruling for each one independently:

1) Conditional Uncertainty of the Contract: If the minor defect and destruction is caused by force majeure or a third party, according to paragraph 2 of the aforementioned article, the lessor first has the right to repair and correct it. Alternatively, the tenant can repair it with the cost of the lessor. If, for any reason, the repair is not done, the tenant has the right to option between continuing the contract with reduction in rent and rescission of the contract.

Now, as to why the lessor is obliged to repair and correct the object, it can be said that: Firstly, the requirement of the lease contract is that the lessor should make arrangements to protect the leased object until the end of the contract. If a defect or minor destruction occurs, he/she must repair it. Secondly, the leased object is an trust in the hands of the tenant and he/she is not liable for it except in the case of transgression and negligence. Any loss and damage is the responsibility of the lessor. However, the right of option for the tenant can be attributed to prevention of loss, breach of condition, and in some cases, partial rescission. If the minor defect and destruction is caused by the lessor, according to paragraph 3 of the aforementioned article, the tenant has the right to demand replacement of the leased object. If the lessor does not agree to replacement) or if replacement is not possible, the tenant has the option of either continuing the lease with reduction in rent or rescission of the contract.

It is worth noting that in Hanafi jurisprudence, which is the basis and complement of Afghan law, most Hanafi jurists do not mention the issue of reduction in rent. Instead, they give the tenant the option between upholding the lease and paying the full rent and rescission of the lease. This is because in lease, the subject matter of the transaction (benefits) is obtained gradually. Therefore, whenever the leased object becomes defective, the defect is considered to be before possession. It is clear that a pre-possession defect gives rise to option. (Zahili, 1405, 4: 753).

2) Continuation and Maintenance of the Contract: If the minor destruction and defect of the object is caused by the act of the tenant, the lease contract remains in force and the tenant does not have

the right to demand from the lessor the restoration of the leased object to its original state or reduction in rent. He/she also does not have the right to rescind the contract. This is because the tenant himself/herself has caused the defect or destruction. Therefore, he/she must pay the rent in full to the lessor until the end of the stipulated period. (Sanhuri, n.d., 6: 290). This ruling is the explicit meaning of the phrase used by the legislator: "…in which the tenant has not been negligent."

2-3. In French Law

The French Civil Code is used, in which the French legislator distinguishes between minor destruction and becoming defective of the leased object and has established separate rules for each, which are mentioned below:

1) Continuation and Maintenance of the Contract: If the leased object becomes defective, the contract will continue to exist, but the lessor is obliged to remove the defect from the leased object. This is because according to Article 1720 of the French Civil Code: "The lessor is obliged to deliver the leased object in the best possible state of repair in all respects. He/she must also carry out all repairs that may be necessary to the leased object during the entire period of the lease, except for those repairs which are the responsibility of the tenant." Based on this, it is one of the duties of the lessor to not only deliver the leased object to the tenant in a sound and healthy condition at the beginning, but also to be responsible for the necessary repairs to keep it healthy throughout the lease period. The obligation to repair on the part of the lessor means that the contract does not terminate simply because of the occurrence of an defect. Otherwise, there would be no meaning in repair and correction if an defect did not appear.

2) Uncertainty of the Contract: If the leased object becomes incomplete, i.e. suffers a minor destruction, the lease contract becomes uncertain because the tenant can request rescission of the contract. This is stated in the following part of Article 1722: "If the leased object is partially damaged, the tenant may, depending on the circumstances, request a reduction in rent or even the termination of the lease."

It seems that the partial damage of the leased object refers to the damage that is caused by a unforeseen event or by the lessor. This is because if the damage is caused by the tenant himself/herself or by a third party, it does not make sense for the contractual benefit of the lessor to be jeopardized by the right of rescission for the tenant. Rather, the tenant and the third party themselves should bear the loss of this damage.Of course, the same interpretation can be derived from the beginning of the article, which states: "If during the period of the lease, the leased object is completely destroyed by an unforeseen event, the lease is completely terminated."

Based on this, whenever the leased object suffers a partial damage, the tenant has the right to request reduction in rent from the lessor based on the extent of the damage and the benefit that he/she can derive from it. This is because according to Article 1720 of the French Civil Code, the lessor is obliged to provide the conditions for full benefit to the tenant. Now, if the lessor agrees to the reduction in rent, the lease contract will continue to exist legally. However, if the tenant concludes, based on the circumstances, that he/she cannot get the necessary benefit from the damaged object, he/she has the right to demand rescission of the lease and in this case the foundation of the lease contract collapses. Therefore, the uncertainty of the contract is due to the judgment and choice of the tenant.

Conclusion

From the above discussion, the following conclusions can be drawn:

1) In Imami jurisprudence, if the leased object undergoes a essential change at the beginning of the lease, it leads to the invalidation of the lease contract. This is because the jurists almost unanimously consider such destruction to be in the ruling of pre-delivery destruction and they

have considered pre-delivery destruction to be a cause for invalidation of the lease contract. However, such a distinction is not seen in French law or Afghan law.

2) The majority of Imami jurists, in the event of destruction occurring during the period of the lease, have established different rulings on essential change based on the causes of the destruction and have stated: If the change (destruction) is caused by force majeure, the lease contract becomes invalid because there is nothing left to continue the lease and no one is responsible for the destruction of the object. If the destruction is caused by the lessor, the lease contract becomes uncertain because the tenant has the option between rescission of the contract and demanding the agreed price and signing the contract and demanding the lost benefits. The fate of the contract depends on the will of the tenant. However, if the leased object is destroyed by the tenant himself/herself or by a third party, the contract remains in force and the tenant must pay the agreed rent to the lessor and ultimately pay the damages for the object.

However, in French law, only the first case is explicitly mentioned, but it is silent on the other three cases. The logical implication of this is that the French legislator does not consider at least the other three cases to be invalid, otherwise he/she would not have sufficed to state only one case. It is not unlikely that French law, like Imami jurisprudence, also distinguishes based on the causes of the destruction.

Afghan law considers the mere change of the object, regardless of the cause of the change, to be a cause for termination of the contract. However, in Hanafi jurisprudence, there are two theories: one is that the mere change leads to termination of the contract, and the second is that the change of the object leads to uncertainty of the contract and the right of option for the tenant.

3) If the change of the object is in the form of minor destruction qualitative change and causes a reduction in benefit, according to Imami jurisprudence, the contract is invalid with respect to the amount of destruction and uncertain with respect to the remaining amount, and the tenant has the right of option. In Afghan law, the lessor is first given the right to restore the object to its original state. If he/she does not do so, the tenant has the option between continuation of the contract with reduction in rent and rescission of the contract. However, French law, like Afghan law, gives the tenant the option between continuation of the contract with reduction in rent and (rescission) of the contract. The difference is that it does not make the option of the tenant dependent on the right of the lessor to restore the leased object to its original state, but rather considers the tenant to be in control from the very beginning.

4) If nothing is destroyed from the leased object, but it becomes defective in a way that reduces the benefit, according to Imami jurisprudence, the contract becomes uncertain. This is because the tenant can rescind the contract to prevent loss and also due to breach of condition. However, in Afghan law, as in the first case, the tenant is considered to have the option only after the lessor does not take action to restore the object to its original state. In French law, the contract remains in force and the lessor is obliged to repair and correct it.

5) If the change of the object makes rational people uninterested in leasing that object, even if there is no difference in the benefit of the object, according to Imami jurisprudence, the contract becomes uncertain and the tenant has the option for breach of condition. However, according to Afghan law, in such a case, the change of the object has no effect on the status of the contract. This is because such a change does not cause a reduction in benefit. However, according to French law, if the change is in the form of minor destruction, the contract becomes uncertain, but if it is in the form of defect, the contract is not affected.

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