International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 11, Issue 11
November, 2024
Pages: 373-393

Defect of Will as the Basis for Rescission Rights in the Legal Systems of Iran and Afghanistan

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http://dx.doi.org/10.18415/ijmmu.v11i11.6376

Abstract

One of the key legal foundations for certain rescission rights (khiyarat) in civil law is the concept of a "defect of will." This theory posits that rescission rights are a mechanism to remedy deficiencies in the consent (rida) of contracting parties. Specifically, it argues that in cases such as khiyar al-‘ayb (rescission due to latent defects) and khiyar al-ghabn (rescission due to gross inequity in the price), the aggrieved party's consent is vitiated by an underlying defect. Proponents of the defect of will theory highlight principles such as the qawaid al-iqdam (principle of voluntary risk assumption), the rational foundation of rescission rights, the waiver of rights through conduct, waiver clauses within contracts, and the concept of mitigating harm as supporting evidence. They assert that this theory provides a more comprehensive and coherent explanation of the rules governing rescission rights compared to the la darar (no harm) rule, and it aligns more closely with established civil law and Islamic jurisprudence. In Afghanistan, the Civil Code explicitly recognizes the defect of will as the basis for rescission rights. Concepts like ghabn (unfair advantage) and tadlis (fraudulent misrepresentation) are considered defects in consent under Afghan law. In Iranian civil law, some scholars also refer to the defect of will as a basis for certain rescission rights. While several of these rescission rights clearly stem from a defect in consent, the drafters of Iran's Civil Code, following Islamic legal traditions, have categorized these rights as grounds for contract termination (rescission) rather than treating them as cases of contract invalidity arising from defective consent (as stipulated in Article 199). This approach does not negate the la darar principle but acknowledges its limitations in fully explaining the legal scope of rescission rights. The defect of will theory, on the other hand, offers a more precise and well-grounded framework for interpreting the rules of rescission and exhibits greater congruence with both civil law doctrine and Islamic jurisprudence. Consequently, it provides a more comprehensive foundation for justifying rescission rights in both jurisdictions.

Keywords: *Defect of Will, Rescission Rights; Compensation for Harm; La Darar Principle; Implied Stipulation; Civil Law*

Introduction

The right of rescission is a remedy for the defect of consent that one or both parties may experience during a contract. In this situation, the right allows the injured party to either consent to the contract or to annul it. In Afghan law, the rights of rescission for misrepresentation and undue influence are examined under the title of defects in consent. A contract formed on the basis of a defective will is considered valid, as there is intent; however, its effects may be problematic (Nazir, 2010: 183). In other words, this basis indicates that in certain types of rescission rights, such as those for misrepresentation and undue influence (Articles 570 to 578 of the Afghan Civil Code), the affected party does not consent to the transaction, thereby rendering the consent—one of the essential conditions for the validity of the contract—defective. The most evident rescission right justified on this basis is the right of undue influence. In essence, the party at a disadvantage consent to the transaction based on the expectation of receiving an equitable exchange. It is presumed that had they been aware of the disparity between the two exchanges, they would not have consented to the transaction. Thus, establishing that this imbalance exists effectively shows that they did not agree to the transaction under the current terms and that their actions should not be regarded as a consensual exchange. Consequently, regarding the transaction where undue influence occurs, the consent—one of the elements of will and the foundations of the contract—is defective. Therefore, the option to rescind the contract has been created (Article 571 of the Afghan Civil Code).

Similarly, in cases of misrepresentation or deception, one can refer to the basis of defects in consent. When one party to the contract resorts to deceit, conceals defects in the subject of the contract, or presents the subject as having the qualities desired by the buyer, they effectively mislead the other party. The consent influenced by such fraudulent actions is not genuine. As a result, in cases of misrepresentation, the affected party is granted the right to rescind to compensate for the lack of genuine consent (Articles 571 and 572 of the Afghan Civil Code).

In Iranian law, some legal scholars have also pointed to the basis of defects in consent and argue that certain rescission rights are examples of defects in consent. However, the lawmakers of the Iranian Civil Code, following the scholars, did not mention these rescission rights as instances of defects in consent (Article 199), nor as cases of non-enforceability of contracts. Instead, they addressed them under the topic of rescission rights, i.e., cases for annulment of transactions. For instance, Articles 396 of the Iranian Civil Code mention various rescission rights, including the rights of undue influence and defect. This does not mean the complete negation of other principles, such as the principle of no harm, as a basis for rescission rights; rather, it indicates that the principle of no harm cannot justify all aspects of rescission rights and is not the only acceptable basis.

Research Question: Is the basis of rescission rights in the laws of Iran and Afghanistan a defect in consent, or can other rules, such as the principle of no harm, also be considered as bases? Furthermore, what is the position of other rescission rights in the laws of Afghanistan and Iran, and can the basis of defects in consent be used to justify other rescission rights?

Research Methodology: To answer these questions, we will examine the legal systems of Iran and Afghanistan and compare the jurisprudential and legal perspectives. We will first analyze the views of scholars and then conduct a legal analysis of various rescission rights to arrive at a comprehensive conclusion. Through this categorization and research approach, we aim to gain a better understanding of the bases of rescission rights in the legal systems of Iran and Afghanistan.

In this research, after examining the basis of rescission rights and analyzing defects in consent, we will address the principle of freedom of contract to demonstrate how this principle can play a fundamental role in cases where consent is defective.

The Principle of Freedom of Contract

The principle of freedom of contract is directly related to the issues of defects in consent and rescission rights. This principle helps us understand how the will of the parties influences the formation and dissolution of contracts and under what circumstances we can claim that this will is defective. By analysing this principle, we can better comprehend the basis of rescission rights and illustrate how the freedom of consent can be applied in cases where one party suffers harm due to a defect in their consent. This examination contributes to a clearer understanding of the legal foundations of rescission rights and shows how legal principles and rules interact to protect the rights of parties in contracts.

Historically, the acceptance of the principle of freedom of contract has not been a longstanding feature in Western legal systems, especially within the Roman-Germanic legal framework, which tended to focus on formal and ceremonial contracts. In Roman jurisprudence, following the tradition of Mesopotamia, there was a catalog of contracts, which imposed restrictions on the freedom of consent in contractual agreements (Jafari Langroodi, 2009: 210).

Freedom of contract can be seen as the philosophical basis for the principle of "freedom of agreements." Advocates of this principle argue that social order is founded on human freedom, as the character of a person cannot develop without freedom. Just as philosophers consider human thought a hallmark of philosophical personality, legal scholars regard the will as a legal indicator of human character. Since humans live in society, their interactions with others should be based on their free will, and no one should be obliged to commit to a duty without their consent (Baharami Ahmadi, 2011: 65). It can be asserted that the principle of freedom of contract is the fundamental rule in private law and has significant effects, such as contractual freedom and the potential to create new transactional models (Ismaili, 2018: 3).

Today, theories advocating for the "validity of unnamed and newly emerged contracts" and "individuals' freedom to enter into rational contracts beyond traditional contractual frameworks" have gained favorable positions among Islamic jurists and legal scholars.

A study of jurisprudential sources regarding contracts and transactions clearly illustrates the evolution and maturation of Ja’fari jurisprudence and the changing perspectives of jurists on contracts, their conditions for validity, and soundness. Nowadays, among contemporary jurists, few doubt the non-specificity and non-necessity of verbal expressions for expressing will, and generally, they recognize the establishment of contracts and expression of intent as permissible through any rational method. These developments are, in fact, the result of a changing viewpoint among jurists concerning contracts. In this context, contracts are not perceived as strictly defined and legislated constructs but as matters rooted in customary and rational realities, whose rules and regulations are subject to the evaluations of reasoners, and, of course, confirmed and endorsed by the overarching principles and general rulings found in the verses and traditions of Islamic law (Mohaghegh Damad et al., 2018: 247).

The principle of freedom of contract and contractual autonomy is recognized in Sunni jurisprudence in a manner similar to Ja’fari jurisprudence. Sunni scholars also maintain that freedom and permissibility are the basis in contracts, with exceptions outlined by the Shari'ah. Ibn Qayyim notes that the majority of Islamic jurists accept the principle of contractual freedom, stating: "The basis of contracts and conditions is validity, except for what the Shari'ah has declared void or prohibited, and this is the correct view" (Ibn Qayyim, 1999: 299). The scholars of Sunni Islam argue that the foundation of Islamic jurisprudence is built upon contractual freedom, barring specific prohibitions set forth by the Shari'ah. Although scholars of different schools may have differing applications of this principle to particular issues, such disagreements do not negate the overarching principle of freedom of contract and contractual autonomy (Sobhi Muhammadi, 1996: 336).

In many Sunni jurisprudential texts, the discussion of pricing often begins with a discourse on price-setting, including relevant hadiths. For instance, some individuals approached the Prophet Muhammad (peace be upon him) asking him to set prices for goods, to which he declined, stating: "God Himself is the price-setter and provider, and I do not wish to meet God while having wronged any of His servants" (Ibn Qudamah, 1984: 15). In the Shafi'i school, the Imam does not set prices, leaving this task to the people themselves (Nawawi, 1997; Ibn Rushd, 1996). Furthermore, Qara Daghi, in his book on hoarding and its rules in Islamic jurisprudence, discusses the role of the market and the state in price regulation (Qara Daghi, 2004). Conversely, Ibn Rushd's work, "Bidayat al-Mujtahid wa Nihayat al-Muqtafid," examines the disagreements among different jurisprudential schools regarding these issues, noting that some jurists, including Shafi'is, limit governmental intervention in pricing to specific circumstances (Ibn Rushd, 1996). Ultimately, Qurtubi, in "Al-Jami' li-Ahkam al-Quran," addresses market regulation and pricing from the perspectives of the Quran and hadith (Qurtubi, 1964).

These sources illustrate that there are differing opinions among Sunni jurists regarding price-setting and the role of the state in the market. The essence of these narratives and similar reports corresponds to what later emerged as the principle of freedom of contract and the law of supply and demand (Hamidzadeh, 2000: 38).

Perhaps this is why in Sunni jurisprudence, and subsequently in the Journal of Legal Principles (Articles 356 and 357), as well as the Afghan Civil Code (Article 9), the principle of contractual freedom is emphasized, and the law acknowledges its significance in contracts.

The Sovereignty of Will in the Formation of Contracts

The role of will and its significance in the formation and validity of contracts becomes increasingly evident at this stage. It is here that the principle of contractual freedom, its limiting factors, and issues related to mutual consent come to the forefront. Within mutual consent, critical topics such as internal will versus external declaration, agreement of wills, and defects of will are explored. Just as will is a prerequisite and indeed a fundamental element in the formation of a contract, it also plays a decisive role in other conditions such as the capacity of the parties and the purpose and motivation behind the contract. The invalidity of transactions conducted by the mentally incapacitated or minors lacking discernment stems from the absence of intent in those transactions. Similarly, the non-enforceability of transactions by the financially incompetent or discernible minors is due to the lack of legally valid consent.

1. The Principle of Contractual Freedom and Its Limitations

The various foundations and bases underlying the idea of the sovereignty of individual will in law demonstrate its superiority as a principle. This principle is a logical consequence of the ideology of freedomism or legal liberalism, which manifests primarily in the principle of legal freedom of action and, specifically, contractual freedom. This reality has led some writers to use the terms "sovereignty or independence of will" and "freedom of will (in contracts)" interchangeably, suggesting they view the two as synonymous.

The principle of contractual freedom is enshrined in Article 10 of the Iranian Civil Code, which states: "Private contracts shall be binding on those who have concluded them, unless contrary to explicit law." Therefore, except in cases where the law obstructs the enforceability of a contract, the will of individuals governs their agreements, and freedom of will should be accepted as a principle. Factors that limit contractual freedom include law, public order, and good morals.

Similarly, the legal system of Afghanistan has adopted the principle of contractual freedom in a limited manner. Although there is no explicit acknowledgment of this principle in the articles of the Civil Code, it can be implicitly inferred from Articles 592 and the last paragraph of Section 2 of Article 502 of

the Afghan Civil Code. Article 592 states: "If the cause of the obligation is contrary to the public order and morals or is non-existent, the contract is deemed void," while Article 502 (Section 2), concerning the conditions for the validity of a contract, provides: "...the object of the contract must be beneficial and not contrary to public order." From the opposite implications of Articles 592 and 502, it can be concluded that if the subject of the contract is beneficial and does not violate public order, individuals can create any obligation. (Jensen, 2014, p. 13) The defined limitations on the principle of sovereignty of will and contractual freedom in the legal system of Afghanistan include imperative laws, public order, and morals.

2. Mutual Consent

A. Internal Will vs. Declaration of Will

At a general glance, it can be observed that the German legal system and common law countries tend to favor the primacy of apparent will. In contrast, French law leans towards the internal will. Perhaps influenced by French law or drawing from the sources of Islamic jurisprudence (especially among contemporary jurists), Iranian legal scholars generally support the primacy of internal will. (Mohseni, 2011: 186) Contemporary Iranian jurists typically assert the superiority of internal will over external declaration. (Safaei, 2012: 48-49; Katouzian, 1997: 226; Shahidi, 1998: 105-203 and 204)

Ja'fari jurisprudence also emphasizes the primacy of internal will. Ja'fari scholars maintain that the internal will and true intent of the parties to a contract are the most significant factors in determining the nature and legal effects of contracts and unilateral acts. In this perspective, even if the external declaration does not correspond with the internal intent, it is the internal will that prevails. For example, Sheikh Ansari extensively discusses this in his book "Makasib," emphasizing that the essence of contracts lies in the intention and internal will of the parties, which is what grants validity to contracts (Ansari, 1998: 202).

Conversely, Sunni scholars do not have a unified approach. While Hanbalis and Malikis generally advocate for the primacy of internal will, Hanafi and especially Shafi'i schools give more weight to external will. In modern Egyptian law, internal will is accepted as a general rule, yet external will is sometimes recognized to validate transactions, as seen in Articles 91 and 92 of the Egyptian Civil Code. (Sahnouri, 1998, vol. 1: 96-97)

Having clarified the perspectives of jurists on this issue, it is now possible to articulate the position of external will within the Afghan legal system. Since the legal system of Afghanistan primarily follows Hanafi jurisprudence, it consequently prioritizes external will. Article 513 of the Afghan Civil Code states: "An expression of will that contradicts the true intent of a person is not considered void unless the other party is aware of the contradiction or the intent." This clearly indicates a preference for external will over internal will. However, due to the shortcomings associated with both external and internal wills, no legal system has entirely adhered to one over the other; rather, one is upheld as the primary principle, while the other compensates for its deficiencies. (Sahnouri, 1998, vol. 1, p. 80)

Afghanistan's legal system is no exception, and based on Articles 511, 513, 523, 706, 707, 708, 709, and 711 of the Civil Code, external will is established as the primary principle, while its shortcomings are addressed by internal will, as illustrated in Articles 700 and 705 of the Civil Code.

B. Agreement of Wills

One of the most important aspects regarding the agreement of wills is that each agreement consists of two opposing yet compatible elements: opposing in that each embodies and reflects the profit of one of the two parties to the contract, as both parties typically seek their own benefit, striving to maximize their gain and minimize their expense; compatible in that ultimately both parties pursue a common goal, and unless their wills converge, the agreement cannot be realized. These two constituent

elements are termed "offer" and "acceptance," and understanding their concepts and implications is crucial in the formation of contracts.

For offer and acceptance to create legal effects, they must correspond with each other; thus, acceptance must align with the offer, and this correspondence must encompass all the elements and conditions present in the offer. Article 521 of the Afghan Civil Code addresses this requirement: "The correspondence between the offer and acceptance is achieved when the agreement between the parties has been reached on all essential matters of the contract. Agreement on some of these matters is insufficient to bind the parties." It is not necessary for the parties to enumerate and agree on every detail (both minor and major), as clarified in Article 522 of the Afghan Civil Code: "If the parties agree on all essential matters of the contract and defer the details to the future, such a contract is deemed valid, unless the completion of the contract is conditioned upon the agreement on the details." Thus, it is essential for acceptance to correspond with the offer, as stated in Article 194 of the Iranian Civil Code: "The words, gestures, and other actions by which the parties create the transaction must be in accordance with one another, such that one party accepts the transaction that the other intended to establish; otherwise, the transaction will be void."

C. Defects of Will in Contract Law

There is considerable disagreement among various legal systems regarding the number and classification of defects of will, as well as among legal scholars within a single legal system. The root of this disagreement lies in foundational principles. For instance, the acceptance of either the intrinsic or extrinsic will directly affects the determination of the number of defects of will, their scope, and their evidentiary aspect. More fundamentally, the main cause of these discrepancies can be traced back to the acceptance of one of the philosophical foundations of individualism or collectivism. In individualistic doctrine, where the individual's autonomy and will are prioritized, the scope of defects of will tends to be broader, making it easier to accept claims related to them. Conversely, in the doctrine of social primacy, where the preservation of contractual relationships and their stability is emphasized to strengthen social ties, the scope of defects of will is narrower. Nevertheless, it is evident that avoiding extremes and achieving balance between these perspectives leads to an equilibrium between order and justice (Mohseni, 2011: 202).

In Iranian law, some scholars assert that defects of will are limited to coercion and mistake (Katouzian, 1997: 330). Although they associate the grounds for rescission, particularly fraud, with defects of will, they exclude them from this category because Imami jurists consider their basis to be "no harm" or implied conditions, rather than defects of will. However, it seems that as many jurists have adopted a broader view, following the French legal system, encompassing coercion, mistake, error, fraud, and deception as defects of will, it should be acknowledged that anything that undermines intent (coercion and certain mistakes) or nullifies consent (coercion) or creates a defect in consent (grounds for rescission like error, fraud, defect, breach of condition, and partial invalidity) should be considered a defect of will. There is no valid reason to restrict the notion of defects of will (Safai, 2012: 48-49; Shahidi, 1998: 105-203, 204).

The appearance of Article 199 of the Iranian Civil Code should not lead to the misconception that the legislator has limited defects of will to coercion and mistake. These instances are not exhaustive but rather indicate the most significant defects of will. Some scholars have even explicitly included incapacity as a defect of will (Shayegan, 1996: 83).

The assertion that incapacity can be considered a defect of will is not unfounded; incapacity is a fundamental component of will. For a will to be legally valid and enforceable, a person must possess legal capacity. Incapacity indicates that an individual, due to legal reasons (such as being below the age of majority or having a mental illness), cannot make valid legal decisions. This condition clearly impairs intent and consent, and thus it can be classified as a defect of will.

To elaborate, if an individual cannot express a valid and enforceable will due to a lack of legal capacity, their will is flawed. In other words, just as coercion and mistake can impair an individual's will and prevent it from being healthy, incapacity can render the individual's will legally invalid. Therefore, the argument that incapacity should be recognized as a defect of will is supported by strong logical and legal reasoning.

Thus, defects of will encompass anything that impairs the components of will (intent and consent), whether it eliminates them or renders them defective, with no distinction made between contracts and unilateral declarations (Mohseni, 2011: 203-204). The Iranian Civil Code limits defects of will or consent in Article 199 to mistake and coercion, without mentioning fraud and error, which are considered defects of consent in the Afghan Civil Code (Articles 551-587).

The Primacy of Will in Determining Contractual Effects

The principle of the primacy of will is one of the fundamental tenets of contract law, asserting that any contract concluded with the mutual consent and agreement of the parties is valid and enforceable. This principle plays a crucial role not only in the formation of contracts but also in determining their effects and execution. According to this principle, the effects and consequences of a contract must be established in accordance with the mutual will and intention of the parties. Two main outcomes arise from this principle regarding the effects and enforcement of contracts:

1. **The Binding Nature of Contracts** Establishing order in the relationships between contracting parties is only possible through the stability of contracts. Therefore, the spirit of civil laws in Iran and Afghanistan emphasizes that the possibility of rescinding a contract is an exception and contrary to the norm. This binding nature is especially evident in Article 219 of the Iranian Civil Code: “Contracts that are concluded in accordance with the law shall be binding upon the parties and their successors, unless they are rescinded by mutual consent or by legal provisions.” Similarly, Article 696 of the Afghan Civil Code states: “A contract is deemed binding after its enforcement, and withdrawal from the contract or its modification without the consent of the parties or a legal ruling is not permissible.” Thus, once a contract is duly formed, neither party has the right to unilaterally terminate it, except in exceptional cases.

2. **The Relative Effect of Contracts** The principle of the relative effect of contracts, along with its components, holds a consistent meaning in both Iranian and Afghan legal systems. In other words, when a contract is established, it is the result of the joint will of two or more parties, and the effects and results arising from that contract fundamentally pertain to those parties and their successors. In both legal systems, according to this principle, third parties who do not have a stake in the contract cannot derive any benefits or suffer any losses from it.

The principle of the relative effect of contracts is recognized through multiple legal provisions in both Iranian and Afghan law. In the Iranian Civil Code, this principle is manifested in Articles 231, 219, 197, 220, and 221, with Article 231 being the most significant, stating: “Transactions and contracts affect only the contracting parties and their legal successors.” This principle is clearly articulated in Afghan law as well. The Afghan Civil Code emphasizes that the effects and consequences of a contract only pertain to the parties involved and their legal successors, excluding third parties from deriving any benefit or harm from it. Specifically, Article 691 of the Afghan Civil Code states: “A contract is deemed binding after its enforcement, and withdrawal from the contract or its modification without the consent of the parties or a legal ruling is not permissible.” This article illustrates that only the parties to the contract and their successors may benefit from or contest the contract, with third parties being excluded from its effects. Furthermore, Article 540 of the Afghan Civil Code reinforces this principle by stating: “Once a contract has been executed, it is binding, and no party may withdraw from it or amend it without the consent of the parties or a legal ruling.” This provision emphasizes the principle of the relative effect of contracts and

the exclusion of third parties from its implications. Therefore, the Afghan Civil Code clearly acknowledges and enshrines the principle of the relative effect of contracts in its legal framework.

The Impact of Defects in Will on Contracts

The influence of defects in will on contracts plays a pivotal role in determining the validity and legal consequences of contracts, particularly in three main aspects: lack of intent, lack of consent, and defect of consent. These effects can be clearly observed in assessing the validity or invalidity, enforceability or unenforceability, and the potential for rescission of contracts.

1. Lack of Intent

Lack of intent refers to the absence of genuine will and valid intention from one of the contracting parties. This situation occurs in cases such as unconsciousness, drowsiness, or mental illnesses. Since intent is recognized as one of the essential elements of a contract, its absence definitively leads to the contract's nullity (Mofid, 2011: 220). In other words, when an individual signs a contract due to unconsciousness or mental disorders, the contract is deemed a legal act without validity due to the absence of true intent. In fact, without intent, a contract holds no legal value, and thus, fictitious or incomplete contracts are also void due to the lack of genuine intent (Katouzian, 1997: 112).

2. Lack of Consent

In instances where intent exists but genuine consent is lacking from one of the parties, the contract is considered unenforceable due to lack of consent (Mohseni, 2011: 196). The absence of consent may arise from coercion, deceit, or duress. For example, contracts executed under the influence of coercion or deception are legally deemed unenforceable due to the lack of genuine consent. This situation is similar to cases where a minor lacking capacity or a mentally incapacitated person enters into a contract; even if intent exists, the absence of free consent renders the contract unenforceable (Shayegan, 1996: 75). Thus, despite the existence of intent, the lack of consent signifies a legal inability to create effects from the contract.

3. Defect of Consent

In cases where both intent and consent are present, but consent is not entirely aligned with reality due to specific reasons such as fraud or undue influence, legal systems operate in a manner that protects the injured party (Shahidi, 1998: 120). In these instances, the legislator grants the harmed party the right to rescind the contract to prevent the infringement of their rights. Thus, legal systems are designed to safeguard individual rights while simultaneously ensuring stability and order in contractual relations. For example, when the defect of consent arises from fraud or undue influence, the aggrieved party can rescind the contract, which helps maintain a balance between individual rights and social order (Safai, 2012: 88). This principle illustrates a focus on individual rights while preserving social stability.

In analyzing the impact of defects in will on contracts, it is evident that the absence of intent and consent definitively leads to the nullity or unenforceability of contracts. The lack of intent, especially in cases such as unconsciousness or mental disorders, results in complete nullity of the contract, as intent is considered a necessary element of the contract (Katouzian, 1997: 226). Similarly, lack of consent means that the contract is unenforceable, as the absence of genuine consent from one of the parties nullifies its legal validity (Mohseni, 2011: 196).

However, in cases where there is a defect of consent, the legislator grants the injured party the right to rescind the contract, reflecting an effort to protect individual rights while ensuring social stability and order (Shahidi, 1998: 212). This analysis indicates that legal systems are designed to meet individual

and social legal needs in a balanced manner, considering that individual rights must be preserved within the framework of social stability and contractual order.

The Impact of Defects in Will on Contract Nullity

In the Iranian legal system, the term "void contract" is not specifically defined. However, Article 190 of the Iranian Civil Code outlines the essential conditions for the validity of transactions as follows: the intent and consent of the parties, the capacity of the parties, a specific subject matter of the transaction, and the legitimacy of the transaction. In other words, a contract that lacks any of these conditions is considered void.

Thus, it can be stated that a void contract is one that lacks one of the four essential conditions mentioned in Article 190 of the Iranian Civil Code. Specifically, these four conditions include:

1. **Intent of the Parties:** The existence of genuine will and intention from both parties to engage in the transaction.
2. **Consent of the Parties:** The agreement and acceptance of both parties freely and without coercion or deception.
3. **Capacity of the Parties:** The legal ability of both parties to engage in the transaction, particularly concerning age and mental health.
4. **Specific Subject Matter:** The presence of a clearly defined subject matter that is the object of the transaction and is capable of being owned.

Therefore, if a contract lacks any of these conditions, according to Iranian legal principles, it is void and has no legal effect. This definition and analysis underscore the importance of adhering to fundamental conditions for the legal validity of contracts within the Iranian legal system.

In the Afghan legal system, the definition of a void contract is clearly articulated. According to Articles 505 and following of the Afghan Civil Code, the essential elements for the validity of a contract include consent, capacity of the parties, subject matter of the contract, and cause. In other words, in this legal system, whenever one of these essential conditions is not met, the contract is deemed void. This is similar to the conditions outlined in Article 190 of the Iranian Civil Code, which includes intent, consent, capacity, specific subject matter, and the legitimacy of the transaction.

However, in Hanafi jurisprudence, differing opinions exist regarding the elements of a contract. Many Hanafi scholars primarily consider the essential elements of a contract to consist of offer and acceptance, treating other elements such as the existence of parties and subject matter as conditions related to the contract's validity (Ibn Hammam, 1988: 224-225). Thus, in Hanafi jurisprudence, the primary emphasis is on offer and acceptance, while other conditions are viewed as dependent prerequisites for the validity of the contract.

In general, the main difference between Hanafi jurisprudence and the civil codes of Afghanistan lies in the fact that Hanafi jurisprudence specifically emphasizes offer and acceptance, whereas the civil codes of Afghanistan and Iran directly introduce conditions such as consent, capacity, subject matter, and cause as essential elements and conditions of the contract.

The Iranian Civil Code, which is based on the principles of Imami jurisprudence, utilizes the terms "nullity" (such as Articles 194, 195, 212, and 217) and "defect" (such as Articles 365 and 366), both of which are synonymous and convey the same meaning. The Afghan Civil Code also refers to both "void" (such as Articles 613 to 619) and "defective" (such as Articles 620 to 636), but distinguishes them from one another. The Afghan legal system, in addition to the legal consequences of void and

unenforceable contracts, recognizes and affirms a general principle based on Hanafi jurisprudence known as "defective," which allows for the possibility of correcting void contracts, preventing their nullification, and maintaining the legal relations of the parties involved.

Thus, in the legal systems of both Iran and Afghanistan, a void contract signifies nullity and cannot be remedied due to defects in the elements of the contract and the conflict of its contents with social interests. The parties cannot rectify it through mutual agreement. However, in certain laws of both countries, it is possible that a void contract may have ancillary effects, such as liability for damages in Article 362 of the Iranian Civil Code and Articles 82 and 100 of the Iranian Commercial Code, which deem a void partnership as having the same effect as a valid partnership regarding third parties (Katouzian, 2009: 323). The Afghan Civil Code also recognizes in Article 619 that, while a void contract is legally ineffective, it may be considered a material event in certain situations and can have ancillary effects, where, in cases of loss or damage of consideration in a void contract, the possessor is held liable (Abdullah, 2011: 164).

The Impact of Flaws in Will on the Validity of Contracts

In the legal system of Afghanistan, the concept of "non-enforceability" or "suspended" is envisioned as an intermediary status between valid and void contracts. This status is limited to specific cases and can only be enforced under defined circumstances. In this system, the primary legal consequence for failing to adhere to the fundamental conditions in the formation of contracts, in addition to annulment, is the concept of "suspended."

In other words, under Afghan civil law, when the essential conditions for the validity of a contract are not met, two possible outcomes can arise: annulment and non-enforceability. Annulment refers to the complete lack of validity of the contract from the outset, whereas non-enforceability or suspension means that the contract is temporarily unenforceable and, under certain conditions, is essentially in a state of suspension.

In this case, the contract lacks legal effect and is considered invalid; however, since the essential elements of the contract are present and the defect causing its invalidity can be remedied, this title significantly differs from annulment. In Iranian law, the terms "non-enforceability" and "annulment" are sometimes used interchangeably, creating difficulties that can only be resolved based on legal principles and the spirit of the law (Katouzian, 1997: 319).

Relative Annulment Due to Flaws in Will

Relative annulment is one of the legal consequences of violating rules related to contract formation that is prominent in French law. Relative annulment refers to a situation where the legislator has devised a remedy for violating protective rules concerning specific individuals, thereby ultimately placing the fate of the contract exclusively in their hands. As long as the interested party does not contest the contract, it remains valid and retains all its effects. However, if annulment is requested by the interested party and confirmed by a court within the designated timeframe, the contract is generally deemed null and void from the outset, losing its effects.

In traditional Iranian law, such a concept does not exist, and we encounter it only occasionally in certain texts derived from Western law (Mohseni, Qabuli and Dafshan, 2010: 254). It seems that although the legal remedy for flaws in will in French law is relative annulment, examining the cases of flaws in will within that legal framework and comparing them with the legal systems of Iran and Afghanistan indicates that the remedies in Iranian and Afghan law are sometimes absolute annulment and sometimes the right to rescind. For example, a mistake regarding the physical identity of a contracting party, as a flaw in will in French law, results in relative annulment. However, the legal remedy for such cases in Iran leads to absolute annulment, while in Afghanistan, it grants the right to rescind.

Right of Rescission Due to Flaws in Will

In transactions where both intention and consent are present, but upon discovering the truth, it becomes evident that the consent of the parties does not fully correspond to reality, the law provides the aggrieved party with the right to rescind the contract, first to protect them while maintaining the contractual relationship. Second, to preserve the stability of contractual relationships and the necessity of upholding social order, this right is exclusively granted to the individual whose mental perceptions have, explicitly or implicitly, entered the realm of agreement; hence, not all flaws in consent receive this attention (Mohseni, 2010: 202).

The Afghan Civil Code, in addition to detailing specific contracts' rescission rights, has established general provisions regarding it (Book Two, Chapter Four, "Effects of Contracts," Section Five, "Effects of Contracts Regarding Dissolution," in the first part under the title "Rescission"). However, it does not provide a definition of rescission. Article 132 of the Afghan Civil Code defines "rescission of marriage" as follows: "Rescission is the annulment of a marriage contract due to a defect occurring during or after the contract, preventing the continuation of the marriage." This legal definition appears incomplete as it only states the reasons for rescission. The best definition would be one that encompasses individuals while excluding others, meaning it should clarify the basis, reasons, and legal effects of the subject matter. Despite these deficiencies, the aforementioned definition is a guiding point for authors and interpreters of the Civil Code, facilitating further theoretical discussions regarding the phenomenon of rescission.

Ineffective Flaws in Will

Some flaws have no effect whatsoever. For instance, it is known that a mistake regarding the identity of a contracting party can be categorized into two types. Sometimes a mistake or error (as defined by Afghan civil law) pertains to essential characteristics that cause a discrepancy between intent and reality, leading to annulment. However, sometimes the mistake concerns secondary characteristics that do not harm the primary objective but only affect the secondary objective of the contract, in which case there is no justification for annulment. Therefore, if the characteristic in question is significant and has been implicitly or explicitly incorporated into the agreement, the effect of noncompliance will provide the mistaken party with the right to rescind. However, if no mention is made of it in the contract, the mistake bears no effect.

The Impact of Flaws in Will on the Types of Rights of Rescission

The impact of flaws in will on various types of rights of rescission is a complex and significant issue in civil law that has attracted considerable attention from legal scholars. The theory of flaws in will serves as a basis for the rights of rescission, particularly against the theory of non-harm, and has garnered extensive interest. Notable scholars emphasizing the significance of flaws in will include Safai (1997: 86), Katouzian (1997: 330), Shahidi (1998: 33), and Boroujerdi Abdeh (2001: 99).

In analyzing the theory of flaws in will, it is noteworthy that this theory is crucial as it can comprehensively and logically elucidate many issues related to rights of rescission, especially in situations where flaws in consent exist in transactions. The theory of flaws in will help explain how these flaws affect the validity or annulment of contracts. By providing a coherent basis for analyzing the rights of rescission, it clarifies the relationship between flaws in will and their legal consequences.

One legal scholar has proposed the theory of flaws in will as a more suitable basis for justifying the rules governing rights of rescission compared to the theory of non-harm. This scholar presents multiple reasons for the superiority of the theory of flaws in will over the theory of non-harm, including the rule of action, the rationality of rights of rescission, and the notion that a disposition can nullify a right. According to this scholar, the theory of flaws in will, particularly in conjunction with legal

principles, provides a more effective means to elucidate the rules governing rights of rescission (Mohseni, 2010: 270-278).

This analysis is particularly relevant in Iranian law. In this legal system, the legislator follows Islamic jurisprudence by placing rights of rescission in a specific section while simultaneously employing the theory of flaws in consent to explain them. However, in practice, a contradiction is observed regarding the application of this basis in Iranian law. For instance, rights of rescission specifically arising from flaws in consent are mentioned in the Iranian Civil Code in the section on rights of rescission, being treated as grounds for contract termination. This discrepancy may stem from theoretical differences between jurisprudential bases and legal texts, resulting in a lack of harmony in the enforcement of legal rulings (Amiri Ghaem Maghami, 2008: 305-306; Shayegan, 1996: 90-91).

In Afghan law, the theory of flaws in will is accepted more explicitly and coherently. In this system, legal provisions, particularly Articles 562 to 590 of the Afghan Civil Code, explicitly address flaws in consent and regard them as the basis for rights of rescission. This approach reflects a more precise alignment between legal principles and civil laws, while also highlighting the significant impact of flaws in will on transactions and contracts.

Moreover, in the legal systems of other countries, attention is also paid to the theory of flaws in will. For example, the French Civil Code recognizes deceit and undue influence as flaws in consent in Articles 1116 and 1118, respectively. Similar acknowledgment can be found in the Swiss Code of Obligations and the Algerian Civil Code, demonstrating widespread acceptance and application of this theory in international legal systems.

The Impact of Defects in Will on the Right of Rescission

In examining the basis of the right of rescission, various theories help elucidate this concept. An in-depth analysis of the basis of lesion and its relationship with defects in will lead to a better understanding of legal rules and their impact on contractual rights.

The personal theory regards lesion as rooted in the sovereignty of will and the protection of individual freedoms, positing that defects in will are the true basis for the effect of غبنin contracts. In other words, this theory asserts that lesion arises from dissatisfaction with the imbalance between the two counter-values in the contract, directly influenced by defects in will (Katozian, 1997: 227-228). This perspective emphasizes the importance of protecting free will and the consent of the parties in contracts, seeking to rectify severe economic inequalities by granting the disadvantaged party the right to rescind.

In contrast, the type theory posits that lesion is considered a defect in the contract, emphasizing the principles of commutative justice, where balance between counter-values in the contract is a condition for the validity of the contract. This theory stresses that contracts that are extremely unjust violate ethical and public order standards and should be evaluated independently (Katozian, 1997: 227-228). This approach explains deception as a violation of the fundamental principles of contractual justice and aims to maintain balance in transactions.

My analysis in this regard is that the personal theory, due to its emphasis on the parties' will and the protection of contractual freedom, aligns more closely with the basis of defects in will. It specifically focuses on the dissatisfaction arising from contractual imbalance. In contrast, the type theory addresses commutative justice and ethical principles more generally, giving less emphasis to defects in will. Thus, this analysis indicates that lesion, as a defect in will, particularly in Iranian law, is directly related to the defect in consent and dissatisfaction with the contract, and compared to type theories that emphasize contractual justice, it can more comprehensively protect the rights of the parties involved.

Shia jurists have proposed three bases for establishing the right of rescission in cases of deception: defect in consent, violation of implicit conditions, and the negation of harm. The basis of defect in consent particularly emphasizes that if the disadvantaged party had known the true price of the subject matter, they would not have consented to the transaction. This basis underscores the importance of complete and accurate consent in contracts (Ansari, 1999: 5/158; Tusi, 1996: 3/19; Shahid Sani, 1991: 6/42; Akhund Khorasani, 1986: 189). This analysis demonstrates that the theory of defect in consent, particularly in Shia jurisprudence, effectively supports the parties' rights in contracts by stressing the need for valid and unblemished consent.

In Iranian law, lesion is not explicitly recognized as an independent defect of will and is examined independently. The Iranian Civil Code places deception among the various rights of rescission , thus granting the disadvantaged party the option to rescind a valid contract, whereas defects in will typically lead to nullification or non-enforceability from the outset. This discrepancy highlights the differences between legal analyses and theoretical frameworks (Katozian, 1997: 243).

Some scholars believe that by correctly interpreting the concept of defects in will, the right of rescission can be founded on this theory. The absence of any of the elements of will, such as intention and consent, is considered a defect in will. Particularly in cases of lesion, which have specific effects on the parties' consent without impairing their intention, it can be viewed as one of the defects in consent (Mohseni, 2011: 201). This analysis suggests that the basis of defects in will concerning deception can focus specifically on defective consent and dissatisfaction arising from economic inequality, thus distinguishing it from other legal systems.

In Afghan law, غبنis regarded as one of the defects in consent and is examined under the principles governing inequality and imbalance in transactions. According to Articles 562 to 590 of the Afghan Civil Code, if one party to a contract suffers due to significant imbalance in the transaction, they may invoke the right of lesion and seek rescission. This perspective specifically addresses the existing deficiencies in the consent and will of the parties and identifies deception as a significant defect in the context of defects in consent.

This approach in Afghan law differs from legal systems like common law and German law, which analyze deception under different titles such as mistake in value or duress. Specifically, the Afghan legal system, based on its jurisprudential and legal foundations, recognizes deception as a defect in consent and analyzes it within the framework of defects in will. This analysis demonstrates alignment with local jurisprudential and legal principles where lesion is specifically addressed (Safari and Badkoobe Hozaveh, 2019: 34).

The Impact of Defects in Will on Fraud

In analyzing the impact of defects in will on the right of rescission due to fraud, we must first address the theoretical basis of this right and then conduct a comparative analysis across different legal systems. Fraud, defined as deception in a transaction, occurs when one party uses false information or conceals facts, prompting the other party to enter into a contract they would not have consented to if they had known the truth (Katozian, 2001, Vol. 5, 354). This act creates a defect in the consent and will of the affected party, as their decision-making is based on incorrect information, rendering their consent and will neither genuine nor valid.

In Iranian law, most scholars and legal experts regard fraud as a manifestation of defects in will and analyze it within the framework of the rights of rescission in contracts (Katozian, 1997: 330). However, some professors (Shayegan, 1996: 83) argue that defects in will are limited to duress and mistake, treating fraud independently from these defects. This analysis stems from the argument that Imami jurists consider the basis of fraud to be harm and implicit conditions, viewing it as a defect independent of defects in will.

In Afghan law, fraud is recognized as a defect in will and classified within the category of defects in will. The Afghan Civil Code, similar to the laws of France and Egypt, examines fraud under the umbrella of defects in will, applicable to all contracts (Articles 562 to 590 of the Afghan Civil Code). Similarly, in French law, fraud is part of the broader theory of defects in consent and is analyzed under Articles 1116 and 1118 of the French Civil Code. Egyptian law also similarly presents fraud as part of the theory of defects in will alongside other defects in will such as mistake and duress. This consistency in legal analyses indicates the acceptance of fraud as a defect in consent, granting the injured party the right to rescind to rectify the defect in their will and reclaim their rights.

These analyses illustrate that while in Iranian law, fraud may be analyzed independently from defects in will, in Afghan, French, and Egyptian laws, fraud is recognized as part of defects in will, with its impact on contracts being examined more thoroughly and comprehensively. These differences in the analysis and classification of fraud significantly affect the handling of deficiencies in contracts and the protection of the parties' rights across various legal systems.

The Impact of Will Defect on the Right of Recission Due to Defect

The impact of will defect on the right of rescission due to defect highlights the complexity and diversity of legal foundations that require a more nuanced analysis. Generally, the right of rescission due to defect serves as a legal tool to protect parties in a contract against hidden flaws in goods and services. There are significant differences in the analysis of this topic.

Basis of the Right of Rescission Due to Defect and its Relationship with Will Defect

In Iranian law, the basis for the right of rescission due to defect is primarily grounded in the violation of the implicit condition of the health of the goods, rather than the principle of no harm (al-lazhar). In other words, if the goods involved in the transaction are defective, the violation of the implicit condition of the health of the goods grants the buyer the right to rescind the contract, even if this defect could be seen as a type of will defect (Abadi, 2016: 247). This analysis rests on the notion that the health of the goods is considered an implicit condition of the contract, and if this condition is not met, the dissatisfaction and defect in consent lead to the right of rescission being established. Consequently, if a party is aware of the defect, their consent to the transaction can affect the existence or non-existence of the right to rescind. This view is based on the principle that possession after knowledge of the defect is seen as an indication of acceptance of the defect, thereby eliminating the right of rescission (Mohseni, 2011: 119).

Differences and Adaptations in Various Legal Systems

In Afghan law, influenced by Hanafi jurisprudence, a defect only constitutes grounds for rescission if the possessor is unaware of the defect and there is no waiver of liability for defects in the contract (Article 684, Afghan Civil Code). This approach differs from Iranian law, where the right of rescission and compensation (arsh) are both considered simultaneously. This means that the right of rescission arises from the existence of a defect, while compensation is related to the reduction in the value of the subject matter of the transaction (Article 422, Iranian Civil Code). In Egyptian law, similar principles regarding the violation of fundamental characteristics of goods exist, which is referred to as the guarantee of defect (Senehouri, Al-Waseet, vol. 4: p. 365).

The final analysis indicates that while will defect and the right of rescission due to defect are examined independently, their relationship, particularly in Iranian and Afghan law, is complicated by various criteria, including the violation of implicit conditions, consent, and compensation. Each legal system provides specific solutions to address these complexities. This diversity of perspectives and interpretations ultimately emphasizes the importance of a precise and specialized understanding of these foundations in legal analyses.

The Impact of Will Defect on the Right of Recission for Breach of Condition

Regarding the basis of the right of rescission for breach of condition, various opinions have been expressed, including:

The Principle of No Harm and Consensus: According to the prevalent opinion in Islamic law, the basis of the right of rescission for breach of condition is the principle of no harm and consensus. Specifically, this view holds that violating a condition in a contract causes harm to the affected party, and the principle of no harm serves as a fundamental rule necessitating the protection of the harmed party. Sheikh Ansari and Mohaghegh Damad emphasize this basis, believing that the right to rescind due to breach of condition arises from the consensus of jurists and the necessity of preventing harm (Sheikh Ansari, p. 285; Mohaghegh Damad, 1995: p. 321). Katoozian also refers to the principle of no harm as the primary basis for the right of rescission for breach of condition, considering the breach of condition as a violation of the implicit foundation of the contracting parties (Katoozian, vol. 3: p. 203).

Implicit Conditions and Rational Foundation: Conversely, some jurists and legal scholars explain the basis of the right of rescission for breach of condition based on implicit conditions and the rational foundation. Khoei focuses on implicit conditions and the analysis of rational conditions in contracts, believing that implicit conditions and the rational foundation in contracts establish the basis for the right of rescission (Khoei, Misbah al-Faqih, vol. 7: pp. 374 & 403). Mousavi Khomeini and Seyyed Mohammad Kazem Tabatabai Yazdi also stress that violating implicit conditions and rational expectations from both parties generates the right of rescission (Mousavi Khomeini, 1984: pp. 220 & 251; Seyyed Mohammad Kazem Tabatabai Yazdi, Margin on Makatib, vol. 2: p. 128).

Analysis in Iranian and Afghan Law

In Iranian law, the basis of the right of rescission for breach of condition is primarily based on the principle of no harm and consensus. The Iranian Civil Code explicitly addresses the right of rescission for breach of condition in Article 234, examining its basis from various angles. Accordingly, will defect is indirectly considered through the violation of implicit conditions and rational principles. In fact, in Iranian law, will defect is seen as an indirect analytical component for the right of rescission due to breach of condition, emphasizing consensus and the principle of no harm. Thus, the right of rescission due to breach of condition is mainly analyzed as a tool for compensating harm and violating the implicit foundations of contracts.

In Afghan law, the basis of the right of rescission for breach of condition is influenced by Hanafi jurisprudence and is mentioned in Article 684 of the Afghan Civil Code. According to this law, the right of rescission arises when an implicitly determined condition in the contract is violated and the other party is unaware of it. In the Afghan legal system, the theory of implicit conditions and rational foundation is specifically addressed, and will defect is analyzed more directly. Unlike Iranian law, Afghan law pays particular attention to the basis of Hanafi jurisprudence and its specific conditions, specifically analyzing implicit conditions and their impact on will defect.

The analysis of the basis of the right of rescission for breach of condition in Iranian and Afghan law indicates that both legal systems acknowledge the impact of will defect but with differences in their foundations and approaches. In Iranian law, emphasis is placed on the principle of no harm and consensus, with will defect being analyzed indirectly through the violation of implicit conditions, whereas Afghan law specifically examines the basis of Hanafi jurisprudence and implicit conditions, with will defect being considered more directly. These differences can have significant implications for the analysis and application of the right of rescission for breach of condition in each of these legal systems.

The Effect of Defect of Will on the Right of Tab'ee Sefaq

Introduction to Tab'ee Sefaq: Tab'ee Sefaq, or the right of "Tab'ee Sefaq," is an essential legal remedy in both Islamic jurisprudence and civil law systems, particularly in Iran and Afghanistan. It addresses issues related to the imbalance or inequality in contracts, providing a mechanism for parties to seek relief when one party has been unduly disadvantaged. This article explores the effect of defects in will on the right of Tab'ee Sefaq and presents an analysis of the existing legal frameworks in Iran and Afghanistan.

Theoretical Foundations of Tab'ee Sefaq

1. **Implicit Condition Theory:** The theory of implicit conditions posits that Tab'ee Sefaq is justified based on the implicit agreements made by the contracting parties. It suggests that, in contracts, there exist unspoken agreements concerning the maintenance of balance; if such balance is disrupted, parties are entitled to rescind the contract. Katoozian emphasizes that Tab'ee Sefaq acts as a tool to maintain the economic equilibrium of contracts and prevent its disruption (Katoozian, 1997: 378-379). This theory is widely accepted in Iranian law.

2. **Criticism of Implicit Condition Theory:** However, the implicit condition theory faces significant criticism. The main critique is that the assumption of implicit conditions may impose unwarranted constraints on the contracting parties, especially when they are unaware of common customs or when the implicit conditions do not naturally or rationally exist. Additionally, compared to the theory of defects in will, the implicit condition theory may encounter fewer logical and scientific challenges. Some legal scholars argue that Tab'ee Sefaq should be analyzed more effectively within the framework of defects in will (Mohseni, 2011: 28).

Legal Analysis in Iran and Afghanistan: In Iranian law, Tab'ee Sefaq is regarded as an independent right alongside other contractual remedies. The Civil Code of Iran explicitly addresses Tab'ee Sefaq and bases it on the preservation of economic balance in contracts. While it acknowledges the implicit condition theory, the theory of defects in will also plays a complementary role in legal analysis and jurisprudence concerning Tab'ee Sefaq. Thus, defects in will are utilized as an analytical framework to understand and compensate for a lack of consent.

In Afghanistan, Tab'ee Sefaq is similarly influenced by Hanafi jurisprudence and comparable legal systems. The Afghan Civil Code specifically discusses Tab'ee Sefaq and its impact on the validity of contracts. Like Iran, Afghan law recognizes the implicit condition theory as the primary foundation for Tab'ee Sefaq but also utilizes the theory of defects in will as a complementary analytical tool. Afghan law pays particular attention to the interpretation of implicit conditions and their implications on contractual imbalances.

Conclusion: The examination of the effect of defects in will on Tab'ee Sefaq in Iranian and Afghan law demonstrates that both legal systems acknowledge the implicit condition theory. However, the theory of defects in will is also applied as a complementary theory for analyzing Tab'ee Sefaq. In Iranian law, there is a focus on maintaining economic balance and the implicit condition theory, while in Afghan law, the influence of the theory of defects in will and its compatibility with Hanafi jurisprudential conditions is specifically emphasized. These differences significantly impact the interpretation and application of Tab'ee Sefaq within each legal framework.

The Effect of Defect of Will on Breach of Description (Right of Rouyat)

Introduction to Right of Rouyat: The right of Rouyat and breach of description are important remedies employed in sales contracts, but there are notable distinctions in their analyses. The right of Rouyat refers to the right to rescind a transaction in which one party has not seen the subject matter of the

sale. After viewing, if they encounter a breach of description, they can exercise the right of rescission. Conversely, a breach of description means that the subject matter does not conform to the descriptions and characteristics agreed upon by the parties.

Differences Between Right of Rouyat and Breach of Description: Some legal scholars argue that the right of Rouyat and breach of description are fundamentally distinct. According to this perspective, the right of Rouyat arises when the parties have specifically emphasized the need to view the subject matter before the transaction, while breach of description relates to the inconsistency between the subject matter and the agreed-upon characteristics (Imami, 1984: 491-494). This viewpoint suggests that the right of Rouyat is triggered by the absence of prior observation and is connected to specific viewing conditions, whereas breach of description pertains to the mismatch of the subject matter with what the parties expected.

Theoretical Basis of the Right of Rouyat and the Effect of Defect of Will: Some jurists assert that the basis of the right of Rouyat is a defect in consent, particularly critiquing how it is formed. This theory suggests that if the parties have initially seen an item and then rely on that observation in conducting the transaction, but it is later revealed that the item does not possess the previously stated characteristics, the consent of the parties at the time of the contract is vitiated and is regarded as an instance of error regarding the subject matter of the sale (Amiri Ghaem Maqami, 2013: 309-310). In other words, the defect of will manifests here as an error regarding the subject matter, leading to the right of rescission.

Legal and Jurisprudential Analysis: In Islamic jurisprudence, especially within Iranian law, the right of Rouyat is explicitly defined, and its basis is indirectly linked to defects in will. According to Article 410 of the Iranian Civil Code, the right of Rouyat is the right to rescind a transaction when the parties have not previously observed the goods and notice a breach of description afterward. However, it should be noted that in analyzing defects in will, Iranian civil law is primarily concerned with error and coercion, and one cannot broadly extend the scope of defects in will by analogy (Katoozian, 2016: 393-394). Therefore, the right of Rouyat, given its specific justifications in law, is regarded independently of defects in will, particularly regarding error.

In Afghanistan, based on Hanafi jurisprudence and specifically Article 678 of the Afghan Civil Code, the right of Rouyat is established as a right to rescind a transaction when the parties have not directly observed the subject matter (Afghan Civil Code, Article 678). This interpretation of the right of Rouyat is fundamentally derived from Hanafi principles and may differ from various theories in Shiite jurisprudence and Iranian law. In Hanafi jurisprudence, the right of Rouyat is generally defined as a right of rescission for a party that has not seen the item, and the effect of defects in will is less emphasized.

Conclusion: The effect of defects in will on the right of Rouyat (breach of description) indicates that this right is analyzed independently of defects in will, especially in Iranian and Afghan law. In Iranian law, the right of Rouyat is defined as a right to rescind the transaction based on a lack of prior observation and non-conformity to descriptions, and it is generally considered distinct from defects in will. In Afghanistan, the right of Rouyat is based on Hanafi jurisprudence, with less emphasis on the effects of defects in will. These differences in analysis and application can enhance the clarity of how the right of Rouyat is interpreted and enforced within each of these legal systems.

The Impact of Will Defects on the Right of Teflis

The right of Teflis, as one of the civil law rights, is established to prevent damage to the parties involved in a transaction. This right is particularly relevant when one of the parties to a contract is unable to fulfill their obligations due to bankruptcy or incapacity to deliver the counter-performance. The foundation of the right of Teflis can be generally attributed to the principle of no harm (la darar), which aims to prevent harm to the parties involved in a contract (Rashti Gilan Najafi, 1407: 299, 316; Isfahani

Company, 1409: 56). In the civil law systems of Iran and Afghanistan, although the right of Teflis is not explicitly mentioned among the rights, it is indirectly recognized in legal provisions concerning the impossibility of performance, such as Articles 363 and 380 of the Iranian Civil Code and Articles 1073 and 1118 of the Afghan Civil Code.

Analysis of the Basis of the Right of Teflis and Its Relationship with Will Defects

Considering the basis of the right of Teflis, which is often linked to the principle of no harm, it can be asserted that this right is primarily related to economic issues and the inability to fulfill contractual obligations rather than to defects of will. Will defects typically pertain to flaws such as mistake, duress, or deceit prior to the formation of a contract, whereas the right of Teflis addresses a specific situation that arises after the contract has been formed, resulting in a disruption of the economic equilibrium between the parties (Alasan, 1393: 41-44). This indicates that the right of Teflis is fundamentally based on the impossibility of performance and changes in contractual conditions after the contract's formation, rather than on will defects.

Scholars and jurists have engaged less in serious discussions regarding the foundation of the right of Teflis, often seeking a general basis for this right (Katozian, 1387: 60). Particularly, theories attributing the basis of the right of Teflis to the principle of no harm generally focus on preserving the economic balance in contracts, paying less attention to issues related to will defects. Furthermore, other theories referencing the principle of "counter obligations" suggest that the right of Teflis arises naturally, especially in situations where one of the counter-performances is absent, thereby eliminating the need to examine will defects (Alasan, 1393: 41-44).

Consequently, the analysis of the right of Teflis reveals that this right primarily concerns economic conditions and the impossibility of performance after the formation of a contract, with no significant direct connection will defects. This observation suggests that will defects, particularly in the analysis of rights related to changes in conditions after the formation of a contract, have limitations and cannot be generally applied to all rights, including the right of Teflis.

Conclusion

The study of the impact of will defects as a basis for rights in the legal systems of Iran and Afghanistan indicates that both systems address the basis of will defects and their impact on rights significantly, though fundamental differences exist in their approaches and the scope of influence of these defects.

In the Iranian legal system, will defects, particularly mistake and duress, are recognized as effective bases for rights. Fundamental principles such as the sovereignty of will, the preference of the real will over the apparent will, and the principle of contractual freedom have broadened the influence of will defects in Iranian law. Specifically, mistakes and duress can fundamentally render contracts void or ineffective, especially when a mistake significantly affects the contract's terms or when duress occurs under specific conditions. This approach supports the true will of the contracting parties and ensures that whenever the conditions for these defects are met, the contract is entirely deprived of legal effect.

Conversely, the Afghan legal system adopts a relatively different approach will defects. This system tends to act more restrictively, placing greater emphasis on maintaining order and stability in contracts. In Afghan law, the principle of the sovereignty of will does not fully materialize, and the apparent will generally prevails over the real will. Furthermore, contractual freedom in this system is influenced by social interests, prioritizing social welfare in cases of conflict with individual interests. Consequently, the enforcement mechanisms related to will defects are more limited in Afghanistan. Notably, the enforcement of mistakes primarily leads to the nullification of contracts only in a few specific cases, while in other instances, it may only result in the right to rescind if necessary, conditions

are met. Additionally, duress does not generally invalidate the contract; rather, the contract is considered corrupt under conditions of duress.

The findings of this research indicate that in Iranian law, due to the acceptance of its specific foundations, the impact of mistakes and duress as bases for rights widely leads to the invalidation of contracts under specific conditions. In contrast, in Afghan law, emphasizing the preservation of order and stability in contracts results in a more limited scope of influence for will defects, usually leading to rescission or modification of the contract instead of nullification. These differences reflect the varying balances each legal system strikes between maintaining contractual stability and protecting the true will of the contracting parties.

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