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Reviewing possibility of annulment deeds during contract of liability

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Abstract

Possibility or impossibility of using annulment and condition of option in contract of liability is an issue which is dealt with in this article. After expressing general issues and an introduction about writer who reviewed annulment and condition of option and the reasons for using it. Believers referred to license annulment and condition of option be claims of consensus, presence of them, and in return these groups are referred to lack of license annulment and condition of option. Incompatible to contract of liability with annulment and condition of option, incompatibility of annulment and condition of option with appropriate nature of contract, referring to bounding to sponsor, are the reasons which are referred to. It seems that arguments making annulment and condition of option possible are facing some doubts which will be described.

Keywords: contract, liability, annulment and condition of option, consequences, mentioning condition of option, lack of expressing annulment and condition of option

Introduction

Various institutions in Islamic rights which are available in civil law of Iran especially in law sector have been in factor of sides especially in conventional relations. In other assumptions, lawmakers respects determination and agreement of individuals and defines certain legal consequences for them. Most of the mechanisms are related to individual conventions and one of the most common divisions is dividing them to certain and uncertain contracts. Most Iranian law-makers believe that liability is a certain contract with supporting solutions. Regarding this contract there is a questions that is it possible to impose annulment and authority or nor? Analysis done can be classified into two groups. Bounding to possibility of imposing and those who are bound to lack of imposing. In this first group we may refer to expiry of liability through religion, commitment to promise, release, transfer and even by referring to reasoning. It

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can be concluded that we may apply it in liability of reasoning. But the reasons of being against using reasoning and authority can be referred to article 698 of civil law which is forbidden. Referring to Article 701 of the civil code and basis of this article, analysis based on deduction and legal reasons, not clearing of sponsor completely, lack of failure in reasoning of both sides, lack of justice, supporting weak side in contracts are among reasons that faces annulment with some ambiguities (Bojnordi, 2001, 95).

Some comments regarding agreement and disagreement of using annulment condition were criticized and reviewed. The first reason mentioned was according to Article 698 of the Civil Law. Some Persian law-makers argued that balance of the two sides can establish validity for liability. Hence, Article 698 expresses absolute liability and it is a complementary argument. (Bojnordi, 2001, 117).

Another case for expressing disagreement with possibility of mentioning annulment and option condition in contract of liability is referring to Article 701 of the Civil Code. This group believes that annulment and option condition can not be used in liability referring to Article 701 along with principle of necessity. Also another reason for disagreement is that commitment of individuals should be in favor of the third party not against them. Annulment of liability contract by sponsor and other side is against Article 231, since according to Article mentioned no agreement can be reached which is against another side in transactions and contracts.

Agreeing to annulment mechanism and option condition was mentioned for some reasons and the first one is secondary innateness and all the society members are mentioned within. Also the issue was approved from aspect of necessity of contract of liability resulting from rights or ahkam.in this respect, analysis based on analogy are significant. Annulment of liability contract is based on this principle, since other sides can cancel it. And there is no annulment when canceling is not possible. Therefore, approving that the necessity of liability contract is not among contracts we can agree that possibility of option condition in liability does exist and the contract is possible from the first aspect.

Also those who disagree suggest not clearing of liability. They believe that it is possible to accept annulment and option condition without need to content permission. Some accepted the reason that liability condition is acceptable without permission of content. Another case is for approving theory referring to Article 733 of Civil Code. The reason of nullity is lack of employment of client. In this case there is no difference between draft and discovering nullity. Hence, we cannot disagree with it (Bagheri, 1999, 49).

Lack of falling of annulment in sides is another issue which was suggested. In this respected right of strengths remains and is defended. Supporting justice and fairness is another principle for defending the theory. The analysis presented which considered fairness is mostly close to legal system in which fairness principle has a special position in interpreting position rules. In Islamic law this article was emphasized. Also weak party is supported which has a joint basis with Islamic rights (Asghar, Agha Mashhadi, 2011, 38).

Possibility or lack of possibility and imposing option and annulment during liability contract

There are some disagreements on possibility or impossibility of option condition. Nearly there is no difference between Shia and Sunni in forging licenses option. But there is a big difference for sponsor. As it is clear from history of problems among imam, Scholars are also integrated public option in the contract of guarantee according to lack of license stipulating. In this chapter two reasons were mentioned by the groups and we will deal with them

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The main questions is that in a situation when a person is bound to pay their debt to another person in which there is a contract between two people, can we consider right of option in this situation?

If we regard that in this situation there is no option in liability contract, as a result it is not acceptable to use annulment in this contract. At first we need to mention that the difference between liability among lawmakers and scientist with liability among public. According to what is accepted among public, liability is ضمّ ذمّة الی ذمة.

But according to Shia, liability is «نقل ذمة الی ذمة

It means when a person sponsors someone else, the employment of obligator is removed and is transferred to liable. With liability contract, the sponsor guarantees. Can they have authority in this situation? E.g. liable agrees that he/she will pay debts providing I have ten days. After ten days and during ten days I`m authorized to cancel contract and if the contract is canceled, indebted is bound to pay.

Option condition is among options which is not for a certain contract and its basis is in all contracts, unless we have a reason for lack of authorization such as marriage in which there is no option condition (Bagheri, 2003, p.52)

In this regard, it was suggested that lawyer consider stability in describing this institution and limited its freedom to a certain condition. In canceling it made certain reason of divorce necessary. Hence, it does not regard annulment legitimate. Article 1120 announced this limitation and Article 1069 clearly indicated that option condition of canceling for marriage is null.

Authorization to option in contract stipulating liability

The scholars before and after death of Allameh Heli believed that sharing option in marriage is valid.

Mohaghesgh Yazdi discussed this issue in a book titled وزین العروه الوثقیand validity for option condition. The theory is consistent with vote of most scholars, since them don`t consider option condition valid and mentioned a reason for their claim:

The aim of option condition is that there is no disagreement and if they have it they may use option time. While guarantee does not accept any warranty for interest in order to impose option condition (Ibn-ghidameh, p.413)

It is worth to mention that above reason is applied where option condition is not valid for guarantor. Aside from difference of ideas for option condition regarding contract of guarantee, lawmakers announced their idea in Article 701. One of the lawmakers argued that

According to the phrase in Article 701 of Civil law we can hardly accept that we may cancel contract. But it seems that presence of this condition does not ruin contract accuracy since asserting invalidity needs legislation (Katouzian, 2001, p.194). Some contemporary scholars reviewed the issue which seems useful to describe it in brief. It is argued that every contract is necessary.

Reasons of validity for option condition in liability contract

Permit to authority to various reasons argues that in total there exists four reasons. The main reason of researcher’s focus on this issue is the one we mentioned in the problem. Next we will describe them one by one.

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Claim of society

Sahib Javaher had another claim (Najafi, 1981, p. 23). Also researcher Ardebili suggested the word ارشاد الاذهان :

«الاقرب عندی دخول خیار الشرط فی کل عقد معاوضه ،خلافا للجمهور ویدل علی عدم الخلاف عندنا، ما تقدم من عموم ادله العقود و الایفا بها،و بالشرط دلیل واضح علی الکل حتی یوجد المانع من اجماع و نحوه»

(Mohaghegh Ardebili, 1994, p.283)

All legal schools emphasize on commitment to promise. Islamic legal Scholl order so in various stories. The most important reason in Quran is the first surah یا ایها الذین آمنوا اوفوا بالعقود which orders faithful to commit their promises. Regarding referring to public reasons we must make sure if contract is correct or is null.(Allameh, 2006, p.17)

Also God says in surah 40 of Baghareh

«یا بنی اسرائیل اذکروا نعمتی التی انعمت علیکم و اوفوا بعهدی اوف بعهدکم و ایای فارهبون»

This one goes to children of Jacob which says remind my blessing and be committed to my promise so that I will keep my promises and only be fearful of me.

Keeping promise is a key feature which is necessary to have evidence. As in Holy Quran it says:

«والموفون بعدهم اذا عاهدوا»

We must bear in mind that the necessity of keeping promise is constant since every wise person regards in a good deed and in contrast regards promise breaking bad deed.[*]

Another reason which is refereed to legitimacy of commitment is a story by Prophet Mohammed:

المومنون عند شروطهم

Scholars mentioned this story as a definite rule and refer to it in various stories in transactions. The purpose of the rule is that every Muslim needs to be committed to their promises.

Obviously, words of Prophet Mohammad is on writing contract not ordering. Hence he addresses all the people it can be argued that he ordered all good people need to keep their promises. If a person signs a contract with another person and accepts the condition, he/she must be committed to it, hence the word condition is important. «المؤمنون عند شروطهم and اوفوا بالعقود are two key interpretations for expressing truth where lawmakers emphasize on all the commitments and conditions. (Bagheri, 1008, p. 13)

Lack of prevention

[*] The same reference. pp. 16 and 17

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Another reason which is presented for proving accuracy of condition option where on one hand general condition is evident and includes every condition. On the other hand there is no reason to argue that there is not an obstacle regarding option condition. Hence generality of condition of evidence includes option condition and is valid as result of option condition.

Shaikh Tousi argues:

انّه لا يمتنع دخول خيار الشرط فيه، النّه لا مانع منه ، فعلى هذا العقد و الشرط صحيحان

(Tousi, p.337)

Shaikh Ensari argues:

«لا اشكال و لا خلاف فى عدم اختصاص خيار الشرط بالبيع و جريانه فى كل معاوضة لازمة كالاجارة و الصلح و المزارعة و المساقاة»

Although in this phrase he considers option condition for contracts, he confessed that factor include valid contracts.

He argued

«بل اطلاقها يشمل العقود الجايزة...»

But it is not clear why the factor of Sheikh regards option condition only for contracts and الا ان يدعى من الخارج عدم معنى للخيار فى العقد الجايز و لو من طرف واحدis not clear.

However as Skhaikh Ansari argued information and commitment to promise include valid contracts.

Sabzevari argues:

«مقتضى اصالتى الاباحة و الصحة جواز شرط الخيار فى كل عقد و ايقاع الا ما دل دليل بالخصوص على عدم جريانه فيه من عقد او ايقاع و كذا مقتضى اصالة الاطلاق فتطابق الاصلان على الصحة و الجواز فى جميع العقود و العهود و الايقاعات الا ما خرج بالدليل.»

Naraghi who dies regarding the factors argues:

If the reason behind option condition in contracts is referring, aside from certain stories we were not able to refer to generalities. Since on one hand the option of disagreement with book is exempted from generalities and on the other hand tradition implies that after differentiating of dealers, it is necessary to trade. Hence, condition of necessity and necessity after differentiation will be disagreement with tradition.

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Ayatollah Khoei argues on this:

In stories where condition is bound to lack of opposition, it is necessary for forging condition of option. Hence it will go for reason which implies on necessity. As a result of self-forging condition it is not about disagreement with tradition unless the condition itself disagrees.

Second discussion-Impermissibility to option of contract

The first person who orders to this option was Allameh Eli in two books of Tahrir and Rules.

Also he chose the same theory. After Sheikh Ansari the theory was mentioned again in which impermissibility is option condition.

Reasons for impermissibility in contract of guarantee

In contrast, the first group believe that in this situation it is not possible to provide opportunity for fraud and they inclined to more than eight reasons. As it was mentioned before, Sunni are in this group. They believe that in liability contract there is no possibility for option of forging (Ibn Ghaddameh, 1988, p.88) next, we deal with reasoning of them and some which were suggested by Shia scholars.

Possibility of annulment contract of liability

Liability contract leads to lack of debt and transferring of debt to sponsor and which was mentioned in Article 698 of Civil Law. Where commitment is removed and is replaced by commitment of obligation of guarantors and in this situation the committed person has no deal.

This element is hardly disputed and the difference had a substantial effect on our civil law. In addition, commercial law and civil code had some extractions from referring rights and there are various basis on this which made some complexities. Most materials are for civil law. When we speak about element of a contract, we refer to a factor which is common in its plural form. As some researchers argue transportation obligation contract of liability is for all kinds even if a guarantor commits to pay.

The theory has always had less fans, since most scholars believe that custom of fan is through guarantee. According to historical background above we can not notice Article 698 of civil law and include it guarantors. Also Article 251 of Civil law passed in 1938 includes debt. The article was extracted from foreign rights.

Regarding possibility of contract and returning of debt, there are some disagreements among Iranian scholars. And this is raised in cancellation. It is close to option condition. If we accept that guarantor and other side can return debt, they can also provide condition for their devastation. Because basis of difference is the same in both cases and includes doubt in ability of determination of both sides. In Shia there is a difference between possibilities of option condition. Some consider option condition due to devastation of guarantee inappropriate and some others regard it valid (Researcher Korki, Bira, p. 56)

According to general law every contract is necessary and it is not possible to cancel it, unless two sides agree. The argument is that is this valid or not? Can they do it?

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Some scholars suggested that in marriage it is not valid since it disagrees with tradition.

Some wide Iranian scholars suggested some differences and argue that after contract we can not make them owe each other (Emami, 2008, p.347). There is a question that why option condition is valid in guarantee contract and the answer is condition of contract is balance and makes debtor free.

If there is any condition here, transferring of debt is bound to them and there is no obstacle.

The assumption is that transferring of debt is possible and guarantee can make a new cause. This authority is in doubt, since if agreement of two sides ruins debt of another person we can not establish balance or agreement for the third party (katouzian, 2005, p. 470). While some scientists did not agree it and argue that there is no difference between option condition and the other factor.

After reviewing expiry date, we will deal with analysis of those agree and those disagree.

Expiry through debt

Commitment to promise

The most common way for expiry of commitment is paying debt and this happens when guarantor pays their debt to their lawyer.(Sehnvari, 1958, p. 96)

Ibra

This is an expression which means avoiding your debt from the person who owes you and transferring the debt to another person. It is among tools of falling of commitments. It is free by which debtor denies their debt.

Transferring

Modern economy accepted that commitment as a financial factor can be traded and should not be restricted to relation of debtor and debit. In Iran`s law two contracts are accepted for transferring of debt. On the other hand, in Article 292 of civil code new term of commitment is recognized and is defined in Article 293.

Civil law-maker considered above two articles of 1271 and 1272 in French Civil Law and in France with change of commitment, current commitment is removed and a new one is established, it is natural that guarantees of former commitment is removed due to change. If we care, we`ll notice that clauses 2 and 3 in Article 292 of Iranian civil law does not recognize this commitment and introduces guarantor and transferring. We believe that lawmakers in Article 292 of Civil Law removed law form from French law and instead of unfamiliar institution of converting commitment to credit of debtor it placed contract which is used in practice. In legal system of various countries, there are usually two legal institution of converting commitment and transferring it separately which have their special consequences. But in Iran they are similar concepts.

If an agreement does not lead to loss, it is valid. It is said it may lead to falling of commitment. So debtor can not demand debt.

Agreement and disagreement by means of annulment in liability

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Agreement by means of annulment in liability

Referring to Article 698 of Civil Law

It argues: once guarantor I place appropriately, debtor is free.

Some Iranian lawmakers in this interpretation argued that both sides can bail it out to credit or creditor must refer to it first. Hence, Article 698 of civil law expressed this law and it is a complementary rule.[†]

Legal rules must have an imperative subject. This is natural for all rules.

Referring to Article 701 of Civil law and basis of necessity principle

According to Article 701 contract is necessary and two sides can not cancel it unless there is a right of cancellation written in it.

The contracts which are based on rule and have fundamental condition are necessary and must do their commitments. Therefore, every contract which is done based on law is necessary and none of sides can cancel it. [‡]

Commitment must be in favor of the third person and not against them

Contract by guarantor is against Article 231, since according to content of Article 196 we can not agree.

Agreement with annulment solution

Common perceptions

There are various reasons by which we can accept annulment of contract through Iranian scientists. The most important one is common perception. Some of legal relations of Iranian people is out of certain rules. Such legal relations which are intervened by lawmakers for good things are mostly related to hierarchy and public are in charge of solving them (Saljoughi, 2011, p.199)

Necessity of contract resulting from law

We may name some sentences such as religious, verbs, committed, duties, signature and other cases. It seems what we mean by sentences are obligatory ones. They are the ones which were passed without intervening Muslims (Ansari, 2009, p. 114)

Reviewing annulments problem in contract

[†] Katouzian, Naser. Civil law in modern legal system. Mizaan Pub. Eighth edition. Fall, 2003, p. 284

[‡] Emami, Seyyed Hossein. Civil law. First volume. Tehran. Eslamieh. 2010. P. 235

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We may consider two forms for this problem. The assumption is in case where we consider guarantor contract necessary. One of the persons who disagreed was Allameh Heli. Seyyed Mohsen Tabatabaei considered the reason of lack of option condition and cleared that it is valid. Since he has right of demand but Alameh Heli did not consider it valid. (Tabatabaei, Bita, p. 87)

Necessity of contract of annulment we may present two forms of formation and analysis. In fact, on one hand we may refer to analysis based on analogy. From this aspect there are some criticisms that the first sentence has some ambiguities. On the other hand it is said in resources and legitimate reasons using institution of annulment is possible in all contracts and we can ban it only hen there exists clear sentence.

Analyses based on legitimate reasons

In Islamic Shia, annulment is used in falling of contract which is in fact its real position. And does not create problems which are suggested on falling of commitments. The reasons which exist on annulment are public ones in other words share believes that during describing the principles is approved and restrictions must be specified.

Regarding valid contracts we must mention that in such contracts if both sides have right of cancellation annulment is not needed anymore. Otherwise, not. Naturally a contract can be annulment which is written appropriately. It is worth to mention that feature of some contracts says that such rule is legal.

Not clearance of promise of committed fully

Some lawmakers for validity of annulment, referred to analyses based on which we can regard them in our doctrine. Previous analysis were available as well. The analysis encounters some weakness and strong points which we deal with. Reasons for defending theory is that first legal doctrine can be origin of law. Hence, we may regard its validity second or secondary degree. On the other hand, it prevents silence in improvement of legal system and strengthening of new views.

Dr, Jafaar Langroudi believes that if annulment is without promise of parties, it will make conventional contract to come to an end. This idea has a fundamental opposition. On one hand it is said annulment of contract can be accepted and on the other hand it says effect of contract leads to conversion of commitment. Hence, it seems that we cannot easily approve it as Article 733 argues.

Civil law

Content of this article will be available in other commitments as well. It is written in one certain contract which leads to transferring of debt. Iranian lawmaker accepted theory of cancelling. Contract of draft is a key method in transferring commitment through transferring debt. In law of the Rome, theory of personalize of commitment was accepted, the person in debt is dependent on presence of commitment. Hence, with change of one of the two committed persons, it will not be stable and can not be transferred. Despite western laws, in Islamic laws where transferring of debt is accepted in a long-term duration with certain condition, from the beginning debt is apart from human personality.

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This does not mean establishment of contract although Islamic sharia was not common in details. In this regard we can argue that there is a join aspect between contract of guarantor and draft.

Conclusion and suggestions:

The issue analyzed in the thesis is possibility or impossibility of option condition. Hence some general issues were mentioned in the first chapter we mentioned some topics such as option, condition, option condition, guarantor and its features. The most important issue was some referring which was used for option. Also contract of guarantors was noticed for some reasons and they used many reasons. But in the second chapter of the thesis possibility or impossibility of option condition was used. In fact the main question was that if there is possibility of condition option or not. Finally, totally reviewing arguments of those agree and those disagree we can argue that condition of option is possible. On the other hand possibility of imposing option of contract from the sides is not illogical and is correct. After imposing it guarantor may receive their debt. In the end, it is suggested that both sides notice content during signing contract and ask for satisfaction of them. And this way violation of right of them will be stopped. Also some comparative studies in other countries regarding this issue is possible for solving such problem and in order to find new solutions.

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