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The Jurisprudence and Legal Review of the Effect of Promise Fulfillment in Sustainable Development of Islamic Community with Comparative Study

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Abstract

One of the problems in different countries including Iran is contracts breach and termination of securities contrary to the ethics. If this process is not resolved via trust and negotiation, two parties refer to legal courts and this increases the legal cases and costly operation, legal procedure, different social problems, property loss that are sold by paltry price in the bids and this is not compensated sometimes. This study evaluates promise fulfillment from jurisprudence and legal aspects and its effect is explained in the sustainable development of Islamic community. Also, promise fulfillment shows high level of human character and ignoring this element leads to loss and this is evaluated with a comparative evaluation in this study.

Keywords: Promise fulfillment, Islamic community, Islamic law, Sustainable development.

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1. Introduction

When the contracts are concluded and an important element is turned into a social and legal institute, different complementary, custom laws are combined with satisfaction between two parties and there is no sign of real will and common intention, thus social benefits are dominant in these contracts (Katuzian, 2008: 218).

When the wills are combined, two parties should accept the contract and cannot cancel it in all nominate and innominate contracts. Also, obligations in contract means that if a contract exists, it should be considered whether is it binding or revocable (Katuzian, 2008: 219).

Binding in agreement is based on an ethical rule and two parties should fulfill their promise. According to the Holy Quran: "O you, who have believed, fulfill [all] contracts (Quran, Maede: 1). Therefore, Allah wants from Muslims to fulfill requirements of their contracts and criticizes who breaks them: "Who break the covenant of Allah after contracting it" (Quran, Baghare: 25) and "But those who break the covenant of Allah after contracting" (Quran, Anfal: 58.).

The jurists refer to the Quran verses for the validity of the contracts and the entire offer, acceptance and binding of contracts in custom law refer to this important element. Some theorists believe that the referent of contract should be evaluated to consider the relevant causes. According to Saheb Keshaf: "The contract is considered as the valid promise" (Al-Naraghi, 1924: 5). In social ethics, promise breach is not ethical. Also, ethics are common in law (Katuzian, 2008: 220). Contract binding means that the promisor should fulfill the obligations and he is obliged to perform on accordance to the subject of contract. Obligation is interrelated with the essence of commitment and we cannot consider a person who selects to do something as obliged to do it. In legal procedures, obligations of binding contracts are also binding but obligations of revocable contracts are not binding. It is because if the promisor attempts to cancel a contract without any formalities before acting in accordance to the obligations at any time, the binding of these obligations is not necessary.

The binding of obligations of revocable contracts is under the question because there is a wrong description of necessity, permission and binding concept of obligation in the contracts.

As it was said, the relationship between contract and obligation is a causal relation. Contract leads to obligation and obligation is its cause. Necessity and permission describe the contract as the cause of obligation. According to the definition, the term "obligation" consists of bindings separated from the contract. For this reason, in the article termination of obligations in Iran civil code 264, the contractual and non-contractual obligations are used.

2. Discussion

2.1. Contractual obligation

According to the definition of contractual obligation, it is generally called the contract obligation and the obligation inserted in the contract. For example, the personal obligation concluding a rent, installment sale or self with a legal or real entity and obligation is dedicated to the main case of contract (Shahidi, 2003: 30).

However, fulfillment of contractual obligation with this extra combination is not defined in the law of Iran. In this law, contractual obligation is defined as: it is fulfillment of obligations in a contract. Contract breach, cancellation are performed based on unpredicted factors and contract cancellation. Contractual obligation vs. the obligation of quasi-delict, civil obligation and obligations of law. Contractual contract doesn't include obligations of unilateral contract, unilateral offer and unfulfilled obligations. It includes the obligations of nominate contracts (binding and revocable) and contract. Also, contractual obligation includes independent and by-contract, simple and by-guaranty and commutative and optional contracts.

Two methods are used to avoid the promisor infringement and these two methods guaranty binding force of contract include:

- 1) If the indebteded doesn't fulfill promise willingly, the debt is got back by force and the creditor can refer to the court to perform the contract.
- 2) If the creditor cannot achieve his goal via direct force, he can ask for compensation from the promise-infringer (Katuzian, 2006: 223). Amir al-Momenin (Leader of Believers) (pbuh) says: For this reason, those who don't fulfill their promise get their estates and houses and sell those (Nahjolbalaghe, 1005: 101).

The nature of contractual obligation is not explained well in the existing legal rules around the world. If these contracts are concluded with different titles in the banks and financial institutes over time, it is possible that the economic changes of crises, political and social events make the contract as costly compared to the costs during the contract conclusion and in this case, the promisor cannot cancel the obligations as he has concluded the conclusion with the prediction of the relevant changes (Shahidi, 2003: 38).

If these changes are not predicted during the conclusion, the binding of the promisor is avoided. In this case, mitigation of contract is raised to remove the problem and by this mitigation, the promisor is released of the hard condition of crisis and can fulfill the obligations under normal conditions (Shahidi, 2003: 39).

However, the relationship between fulfillment of contractual obligation and obligation fulfillment is particular and general (relation) of this form as on one hand, fulfillment obligation and payment are included in contractual obligation and on the other hand, execution is optional execution, since it is possible to enforce to execute. But fulfillment of promise is optional not obligatory payment refers to optional payment. From the third aspect, promise fulfillment is said the fulfillment of obligation based on contract and it is not based on execution inconsistent with contract.

If the merchant and economic and service companies observe that by delay in debt payment, free cash capital is available for them to have profitable transactions, for example if the merchant buys some goods for three months on installments to pay them after selling, now with the delay of debt, the money achieved by selling is used to purchase and sell more goods (Mosavian, 2011: 449).

In Iran law, the two parties in contractual contracts and outside the contract have similar descriptions, the payer and receiver can be defined. As it was said, payment has a general and particular relationship with execution. For the validity of execution of contractual contract, we need the will of both parties and the will of the executer is not adequate, the nature of obligation fulfillment is a legal act and bilateral trade requiring the initiative will of two parties.

In terms of effect, contract and obligation are different. The effect of contract is the obligation between two parties but the effect of obligation is the binding imposed on the promisor in the contract. Contract creates obligation (Katuzian, 2008: 9) and its effects are not mistaken with the bindings of obligation.

2.2. The definition, nature and effects of promise fulfillment

Obligation fulfillment (Jafarilangerudi, 2012: 3817) is indeed the simplest legal act leading to waiver of obligation and is referred to the existence of obligation (Emami, 1991: 312). Indeed, it is the act by which the promisor obliges to what is required in the contract (Katuzian, 2013: 13). The promise fulfillment is fulfillment of what pledged for (Mahtabpour, 2012: 125) in promise fulfillment, to achieve the intention of promise (Khanadl, 1929: 314), the content of contract should be respected, the obligation of promisor should be performed to avoid obligation waiver.

According to the Holy Quran, (Baghare: 177): “[those who] fulfill their promise when they promise”. And in (Al-Maede: 1); “O you who have believed, fulfill [all] contracts”. Then, (Al-Anfal: 72) “And if they seek help of you for the religion, then you must help, except against a people between yourselves and whom is a treaty”.

According to Amir al-Momenin: Promise is our collar until the doom day, if any one fulfills his promise, he has fulfilled his promise to God, if anyone infringes it, break the promise, he has disrespected God. Even to help the Muslims, contract and promise are necessary.

According to the prophet Muhammad (Arusi Hoyzi, 1962: 77, 210 and Al-Hendi, 1984: 18): It is obligatory for the Muslims to fulfill their promise and in another saying, unless the promise makes the Helal (lawful) as Haram (forbidden). The first one refers to the conditions in contracts as obligations. The next one refers to fulfillment of the obligations accepted by two parties and we can legitimize the above items (Mostafavi, 2015: 263).

According to article 265 of Iran civil code, “If anyone gives property to another, it is deemed that he has not done so without consideration; therefore if a person gives property to another, while he is under no obligation to do so, he can ask for the return of such property”.

If giving property to another one is presumption of existing debt to him and the payer should give the reason of quittance to return it or give presumption of innocence and the one claiming indebtedness should give reasons, otherwise is sentenced to what he took (Bahrami, 2011: 585).

Is the obligation to pay cash is included in ownership or property transfer? Or cash payment is the action and these obligations are considered as in obligations with the object of work? Some authors of civil law have discussed the listing of obligation cases and mentioned the title of monetary obligation.

One of the famous theorists of Iran law explained promise fulfillment, infringement and contractual responsibility and discussed this case in details (Katuzian, 2013: 36-43). Specifically, the obligation issue and the relevant questions are discussed.

We can say there is a difference between monetary obligation and value obligation. The debtor should pay in both items but in monetary obligation, transfer of definite amount of money is considered without considering its real purchase power. In other words, monetary obligation is based on Rial value not the price of other services and goods. However, in value obligation, the debt is regarding the performance, transfer of definite value and achieving a definite result by paying money and in the first type obligation, the goal of obligation is giving money but in the second case, money is a means of obligation fulfillment.

In the article 269 of civil code, for fulfillment of an obligation a payment by a party there to is only effective if he delivers what he himself owns or what he is authorized by its owner to deliver, and if he is personally competent to do so. In article 269, the promisor gives a property for promise fulfillment and doesn't deliver the transferred property and only for the reason of insanity of the payer, the debtor returns the money given for the debt to the creditor (Jafari Langerudi, 2001: 145).

Value obligation refers to the obligations to perform the task. For example, the obligation of the husband to pay the alimony of the wife is performed by paying money but its main issue is providing the materialistic needs of the wife, food, clothes and housing and here money is a means of fulfilling this obligation.

In some cases in intentional or unintentional damage, a person should pay for the loss in accordance to the contract and here the subject of obligation is doing work and its cost is measured by money in accordance to the verdict of the court (Katuzian, 2013: 51).

In the article 269 of civil code, fulfillment of promise is dependent upon the owner or authorized person and his competence and this is occurred when a promisor delivers what he himself owns or what he is authorized by its owner to deliver and it is not effective regarding the delivery of the transferred property as transfer is based on the contract not during the delivery and the payer cannot be the owner of the property being delivered (Varaste, 2007: 134).

According to the article 279 of civil code, when the goods to be handed over under a contract are not particular goods but are of a general nature, a party bound by the contract need not deliver goods of the best quality, but he must not hand over goods which according to custom and usage are considered defective. The jurisprudence rule means that what is in custom law is valid (Imam Khomeini, 1987: 33).

A question is raised whether the debtor fulfills obligation willfully and the creditor accepts it or the fulfillment is happened with the agreement of debtor and creditor? Or it is bilateral with the will of debtor or payer? Or it is legal event? We can say that the important point in promise fulfillment has no effect on its nature and it is one of the legal events and the important issues as the lack of competence condition in promise fulfillment supports this hypothesis (Katuzian, 2012: 241) and initiation intention in promise fulfillment is not necessary and for its fulfillment, the previous obligation and the obligation in accordance with the obligation subject are necessary (Safayi, 2014: 236).

According to article 265 of civil code, "If anyone gives property to another, it is deemed that he has not done so without consideration; therefore if a person gives property to another,

while he is under no obligation to do so, he can ask for the return of such property. If giving property to another one is presumption of existing debt to him and the payer should give the reason of quittance to return it or give presumption of innocence and the one claiming indebtedness should give reasons, otherwise is sentenced to what he took. It seems that the legal procedure shows that the payer and claimer of return should bring reason to prove what justifies returning property (Katuzian, 2012: 234).

According to the article 302 of civil code, “If anyone owing to a mistaken belief that he is in debt pays that debt, he has the right to reclaim the amount in question from the person who took it without right.

The natural obligation is called partial obligation and is based on ethical obligation and if the promisor doesn’t fulfill his obligation, due to the lack of responsibility as important in legal obligation, the creditor cannot oblige him to fulfill obligation by force. If the promisor fulfills his promise, as the result of his act, this problem is removed and the mere ethical binding is turned into the legal binding and the promisor cannot return what he has paid in the natural promise fulfillment based on the fact that his debt had no legal aspect (Jafarilangerudi, 2001: 21). According to article 266, if an undertaking is made in such manner that the obligee has no legal right to demand its fulfillment, in the event of fulfilling it on the part of the obligor of his own will then his claim for restitution will not be admissible.

Some law makers (Katuzian, 2012: 241) have inferred from this article that the debt is not achieved due to prescription, if it is paid based on the will of the debtor, it is not returned even the payment is performed based on the mistake to its claim but it verifies prescription in obligation waiver (Shahidi, 2011: 327). Dr. Langerudi believes that obligation in this article is referred to the item that is created legally, due to contingency as verdict of the court, the promise cannot claim it and obligation fulfillment is performed in this regard (Mahtabpour, 2012: 129).

In civil law of other Arabic countries, article 285 of civil code of Syria, articles 271, 272 of civil code in Libya, articles 23, 25, 29 of Lebanon have recognized promise fulfillment. According to article 285 of Syria, “if there is a joint liability relationship between the debtors, debt fulfillment by one person pays the debt” and “the indebted can claim the debt of all liable debtors or one of them”. In this regard, it is required to observe the description of the relationship of each of debtors adjusting the effect of debt (Dadmarzi, 2009: 293). This is main principle in custom law of international contracts of countries and according to the views of some international lawmakers and in the introduction of US charter and convention 1969 of Vienna in article 26, “Any enforcing contract is binding for the parties and should be performed with good intention by them (Baladsur, 1996: 380).

2.3. Execution of promise obligation

Execution of promise obligation is a challenging issue in all countries and different systems (Sanhuri, 2009: 161). The assembly of Islamic jurisprudence of Kuwait in the fifth period in 1409 (AH) stated that the term “promise fulfillment” is a necessity for the debtor unless for a reason. The effect of binding is limited by effect of promise or replacement for loss for the indebted and non-fulfillment of promise seems implausible (Al-Zahidil, 2007: 51-57).

From legal analysis, we should say it is a mixed reality between the materialistic execution of promise and prevention from intrusion in agreement on fulfillment of obligation and it is a type of legal act as it is an action only performed by physical act (Senhuri, 2003: 162). Promise is an agreement binding on two parties and this agreement is necessary for the debtor and indebted and if he refuses, he should be executed by force.

A question is raised here, based on the refusal of the other party of promise of fulfillment, can we terminate it? The answer is that if the other party refuses, the other one can ask the court for the termination. In the law of some countries, the legal prosecutor can verify or reject the cancellation (1184 civil code of France). In other cases, cancellation is performed after proving the delay in the payout of debt by the will of the contract party and the court states it after proving it (civil code 119, Aljazeera) (Katuzian, 2013: 234).

The important benefit of this right is releasing the creditor from the imprisonment right as he can refuse his obligation or asks for binding of contract or cancel the contract from the beginning due to the lack of fulfillment of promise.

The international rules consider the lack of promise fulfillment in international commercial contracts plausible in the following items:

- 1- Lack of fulfillment of obligation by one party is plausible if the given party proves that lack of fulfillment is out of his control and it was not predicted in the contract conclusion or the results were not predicted.
- 2- If the barrier is temporary, coercion by considering the effect of the barrier is accepted for a definite period in promise fulfillment.
- 3- The party infringing the obligations should warn the other party about the barrier and its effect on his capability to fulfill the obligations. After a definite period, if the responsible party doesn't inform the other party, he is responsible for the loss of lack of delivery of the notification.

The term coercion is selected as it is recognized widely in international trade and this is verified in most of international contracts (Unidroyt, 2010: 259).

2.4. Some questions regarding the fulfillment of promise

a. Who should fulfill the obligation?

According to the article 267 of civil code, “If someone who is not the actual debtor pays the debt in question although he does so without the debtor’s permission, the debt shall be discharged; if, however, payment is made by permission of the debtor, the payer can refer to the debtor, but otherwise not. If the third party pays the debt without the debtors’ permission, there is no obligation from the debtor to the third party to be his debtor and the waiver of the debt of the main promisor doesn’t create any obligation for him (Emami, 1991: 316-317).

b. To whom the debt should be paid?

The debt should be paid to the promise or his attorney as in the contract, the promise is the owner of promise object (Khanadl, 1929: 323). According to the article 271 of civil code, “A debt shall only be paid to the creditor or his attorney or to someone legally entitled to receive such payment”.

It is natural that the debt should be paid to the creditor and it is not required that the present creditor is the obligation party in the contract and by paying to the legal attorney, the debt can be paid (Katuzian, 2013: 32)

c. When and where is the debt paid and who is responsible?

According to article 219 of civil code, “Contracts made according to law are binding on the parties or their substitutes, and if a deadline is fixed in the contract, the obligation should be fulfilled”.

Any act under a contract must be performed at the place where the contract is made (Khanadl, 1929: 325). According to the article 280 of civil code, “Any act under a contract must be performed at the place where the contract is made, unless the parties to the contract have made a special arrangement or unless usage or custom require some other procedure. The jurisprudence rule means that what is in custom law is valid (Imam Khomeini, 1987: 33).

According to the article 281 of civil code, “Any expenses incurred in connection with the payment of a debt must be borne by the debtor, unless a provision to the contrary is made”. If the provision to the contrary is not made, obligation to sometime is obligation to its causes (Emami, 1991: 47-152).

If any person has two debts, and the deadline of one of them is reached, what is paid by the debtor to the creditor is the present debt and the termed debt as its payment period is not reached, is on his account (Khanadl, 1929: 327).

According to the article 282 of civil code, if the debt of the debtor is paid to one of the liable creditors for the reason except obligation, his debt to other debtors is not paid unless for the share of the indebted to whom the debt of debtor is paid. We can say either of other liable debtors is responsible for fulfillment of debt as this fulfillment is for their benefits and they refer to him to acquire their share but to other aspects of obligation waiver, the indebted is not liable for the attorney and he acts from his own will. Thus, in case of termination for the reason except obligation, if this cause is only related to one of the debtors, the debt of the debtor is only paid based on the share of this indebted to other debtors and if his debt is involved to the rest of debt. The release of debt without obligation has not benefits for other debtors and imposing loss on them is not true (Jafarilangerudi, 2009: 128).

The first party should fulfill his obligation and he cannot perform the obligation that is determined well or its deadline is not reached (Unidroyt, 2010: 321).

The important benefit of this right is releasing the creditor from the imprisonment right as he can refuse his obligation or asks for binding of contract or cancel the contract from the beginning due to the lack of fulfillment of promise.

In our civil code, such right is not predicted for the creditor and this question is raised whether by the general rules of contracts, we can infer such option in commutative contracts or not? Like non-fulfillment of obligation, can we accept the contract cancellation as a rule? We can say, in commutative contracts based on this implicit condition that if each promisor refuses the obligations, another party can cancel the contract based on the option of non-fulfillment of implicit condition and we can say each commutative contract consists of option of implicit condition in case of non-fulfillment of obligation and based on this condition, the creditor can cancel the contract (Katuzian, 2013: 234).

This verdict, option of termination is an exceptional solution as applied as a necessity not for compensating the loss and if the contract balanced is disrupted, another party can be released of obligation and sometimes, the law maker cancels the contract and there is no need to the decision and selection of the contract party (Katuzian, 2013: 235).

In addition, the ethical obligation of promise is based on the condition that the contract party is committed to do it and if the other party refuses to execute it, there is no obligation for another one and two mutual obligations are created and contract binding is based on this condition and if one of the promisors doesn't fulfill his obligations, another one has the relevant right (Katuzian, 2013: 234).

4. Conclusion and recommendation

Financial conflict in all countries is a natural phenomenon but the failure of proposed solutions by the researchers regarding the non-fulfillment of obligation in Iran is mostly due to the ignorance of the effects of delay to fulfill the obligations and similar rules for those who delay payment. They think that anyone who delays is an offender and they propose to punish the offender by any legal way. Another group thinks that all who delay are bankrupted and it is not required to get the loss of delay and the principal debt can also be ignored. These are the true examples of these cases.

People should be encouraged to fulfill their obligations to avoid the long legal procedure via the courts. They should know that in case of non-fulfillment of obligations, they are deprived of their social rights, second by blocking the property and estates of the promisors, adverse effects are imposed on the family of promisors and the society and the promise is encountered with many estates and property as they are not converted to cash within a short period.

Islamic economy model is a valuable tool that is used not only in Islamic countries but also for all countries and it can create much benefits. Despite the western countries considering development as materialistic-based, this model considers ethical and spiritual development and leads to the experience development in poverty and inequality in less developed countries.

By its true execution and updating it based on the jurisprudence of Islam, social and economic justice can be achieved and this leads to the economic development of an Islamic society. By Islamic rules, the trading can be facilitated.

Also, Islamic rules reduce the contract costs. If some Sharia problems are occurred in bank operations, the jurists can change the rules and updated it based on the principle “Al-Zarurat Tabih Al-Mahzurat” based on the benefits of Muslims as discussed in details in this paper. This change of rules doesn’t change the Quran and tradition texts but this change can be consistent with the relevant texts. The Islamic government should reduce poverty via funding of small and medium enterprises, the development of agricultural and rural activities and public welfare of society and reduction of social inequality and avoid the presence of the ignorant, non-experts on their financial planning and property. Imam Ali wrote to the Egyptians: I suffer that the ignorant of this nation appoint a ruler and distribute public property. The foundation of the concept of Islamic community banking should be established and the studies on Islamic economy can be internalized and they should consider it as the researches on medical science and invest on them.

As the nature of Islamic economy is flexible, this is suitable to reduce risk and social security system is increased for efficiency of risk division and people should consider Islamic system for themselves and there should be a relationship between risk division and individual stimuli. If the mass takes benefit of society today, they should fulfill their obligations in future and don't hide their revenue of the Islamic ruler and the Islamic government should support them and this leads to the efficiency of economic stability, financial stability, risk taking, public participation and high economic growth and have positive effects on the development of Islamic community. The Islamic government protects the individual and social property against the unsuitable operation and applies some tactics in economic relations. Also, the Islamic government observes the distribution and justice rules at any time and place and internalizes the social balance to be used in the most suitable position.

Regarding the probable damage of non-fulfillment of obligations, it is related about civil liability and its basics should be used for compensation. In France civil law, civil liability is based on fault and in Iran law, besides the fault predicted in article 1 of civil liability, there are various basics regarding cause.

Based on considering different instructions in payment delay in Islamic countries, in terms of Sharia, based on the loss of non-fulfillment of obligations of customers, the price can be used for special applications and in charity organizations.

Here, two issues are raised, one is regarding compensation and the legal and real entities can oblige the debtor to pay all those losses for complaint and principal of the debt as the debtor has caused such costs. This solution is based on Sharia rules and it is authenticated from legal aspects on the condition that the debtor delays the debt payout and also he is not encountered with real bankruptcy and insolvency. Another case is regarding binding aspect and the promise can oblige the debtor to give money to charities. In funding contracts, it is conditioned that the debtor in case of delay is required to give money to charities equal to a definite price. This aid is performed with the real supervision and coordination.

Due to the long legal procedure of contracts, the creditor is at loss and the creditor with the relevant documents has no benefit in legal procedure and he has not achieved his right completely and all these factors and methods are controlled directly with the freedom principle of two parties will.

The execution of formal documents with the execution operation cancellation in the court on one hand and returning the mentioned operation by considering bankruptcy claim for real entities and bankruptcy claims for legal people is not reasonable. As the principle of execution of formal document is used to apply the benefits of formal document without the verdict of

the court and if the execution duration of documents is equal or higher than the period of claims procedure, violation of intention is considered. Thus, the creditor with the executing document has no benefit in legal procedure and has not achieved his right and this leads to loss. All these factors and methods are directly controlled by the freedom of will of two parties. The selection of dispute resolution and the decision regarding the resolution method and ignoring the strict legal procedure is dedicated to local law and judgment is mostly based on initial agreement.

The verse, “*O, you believe, fulfill your obligations*”; is regarding the obligation of the promisors and the relevant delay is based on their offense and it has adverse social and economic effects and this creates disruption in economic plans of the public and fulfillment of promise is a global principle and it is one of the important virtues.

All people in any continent have special attention to the fulfillment of promise and promise infringement is treason and promise fulfillment is a virtuous act. It is required that as Muslims, consider the fulfillment of promise as one of the important ethical principles as emphasized in the Holy Quran and traditions. Allah has emphasized in the Holy Quran: Fulfill your promise and promise is much emphasized.

This paper is completed on the day of martyrdom of Imam of kindness (Imam Reza) and it is dedicated to Imam Reza (pbuh). I hope all Muslims consider the fulfillment of promise as legal obligation and the entire Muslims should take benefit of its effects.

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