

Research Article

A study of willful options in religious and civil laws

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ABSTRACT

Rights that are mentioned in religious law books, and religious authorities have acknowledged them, do not have a common basis. The right of cancellation may be arising from the clear desire of both parties (contractual basis); or reparation of undue damage resulting from the contract, or the motivation of the lawmaker being to authorize the injured to cancel, or historical customs and practices justify this right. In religious terms, these rights are referred to as *Khyarattaabodi*.

The subject of this study is the analysis of rights arising from the clear desire of both parties, referred to as willful or contractual rights. Understanding the basis of rights, especially willful rights, is of great importance, because some religious authorities have attributed these rights to the will of the parties. But, considering the basis of all rights (even lesion option, or *eyb* option) as willful, is incorrect, since in this case, the generation of options, directly or indirectly, arise from the will or the contract between the two parties. A problem with this view is that in this case lesion option is considered part of infringement option. In other words this option is considered contractual and based on will. Whereas in religious and civil laws, lesion option divides the infringement option, not being a part of it. In opposition to these religious authorities, there are others who consider damages as the basis of all options, and say: Even if the parties' wills affects the generation of options, this generation is such that the parties have conditioned the contract on non-loss directly or indirectly. But both of the above views are extremes in the classification of the bases of options. Correct view is to classify them according to their common bases. In this article options are analyzed according to religion and law, and the views of religious authorities who deem will or loss strictly as bases of all options are examined.

Keywords: Options, Cancellation, Will

INTRODUCTION

The principle, in contracting, after understanding and accepting other conditions, is *lozoom*, meaning that both parties commit to the contract, and that neither party can cancel the contract without the consent of the other. This is known as the *lozoom principle*. According to this principle, when the necessity or legitimacy of a contract is in question, this principle rules. However, this principle may encounter some intents, where these intents provide for the annulment of the *lozoom principle*. This intervention may be performed by

the lawmaker to one of the parties to cancel the contract, or may allow for the cancellation of the contract by agreement of both parties. The right to cancel the contract is known as annulment option. *Khyar* means settling one's heart on the individuals will. And, «انت بالخيار» means "do as you please." (Feiz, 1371, p 312).

And the term denotes the option to cancel the contract, meaning that the owner of the option has the choice of cancelling the contract of keeping it. Similar to other options.

Study of options in religion and law shows that the basis of annulment option is not constant. In some cases it is based on loss; meaning that losses are the cause for generation of annulment option, and by eliminating the loss, through any means, the option is impractical. In other cases this option is based on the parties' wills. Discussion of options, especially options that are based on will, is important because identifying the limits of will in granting this option to the parties, and separating these options from options based on loss, which differ in the cancellation method, are possible only through knowing the concept of will and its range.

Therefore in this article, we attempt to analyze options based on will, and after verifying their basis, their deterioration will be analyzed.

Options bases

Dispersion of the topics and subjects in the discussion of options lead us to examine the history and the basis of each option individually and not to give a general theory for all options.

Options, with regard to their bases can be divided into three categories:

- 1- Options that are based on customs and traditions of the beginnings of Islam, which are confirmed by Islam, and we cannot be certain that their basis is loss.
- 2- Options that have contractual basis, such as conditions option, infringement option, and inspection option.
- 3- Options that are generated to compensate for undue losses, such as malfunction, lesion, tardiness, inspection, and other options. (Katoozian, 1376 5-63).

One scholar has objected to this classification, saying that limiting the bases of options to three groups is wrong, and there is a fourth group that is not relate to the other three, and that is the option of *tabaoz-sefgheh*, which is based on the ability to cancel a contract and form multiple contracts. (Jafarilangaroodi, 1381, p 165)

Options based on will

Willful or contractual options are options that are somehow related to the contract between the

parties and the basis of these options is the wills of the parties. Contractual options can be classified in two groups: 1- Options where the parties' will directly effects their creation, such as the conditions option, and 2-Options where the parties' will indirectly effects their creation, such as the infringement option, and the inspection option. But in general it can be said that since the will of a party effects these options, they have a common basis (which will be discussed).

Option that is directly taken from the parties' will

The only option that is directly, and without any medium, taken from the parties' will, and the parties' will is the main cause for its creation is the condition option. This means that the parties agree on this option. In this section, we shall discuss this option and its basis.

The Condition Option

Documents & Narratives

There are narratives regarding the Condition Option. Some of them allow any conditions in the contract by the parties, and others are about a specific instance and can confirm the Condition Option along with the general narratives.

General Narratives

- 1- Imam Sadiq says: Muslims must honor and act upon the conditions they set with each other; other than conditions that contradict the Quran (Horrameli, Bita, vol 18, p 16).
- 2- Imam Sadiq is asked about a servant on the condition not to be sold, or be given away as a gift. In response, the Imam says that these conditions are admissible, other than being inherited; since a condition that is in contradiction with the Quran is void. (Horrameli, Bita, vol 18, p 17).
- 3- It is cited, from Imam Ali: "If anyone makes a condition on his wife, he should act on it. Muslims should honor and act upon the conditions they make; other than conditions that make an allowed act, forbidden, or a forbidden act, allowed.

These narratives and other narratives point to the necessity of acting on conditionsthat parties or

their associates make; and generally consider acting on conditions a necessity; other than conditions that contradict the Quran, or make an allowed act, forbidden, or a forbidden act, allowed.

Specific narratives

There are specific narratives that are special for a specific event and do not refer generally to the condition option. However, in it, the Imam has confirmed the condition placed between the parties. These, along with the general narratives, confirm the condition option. We refer to one, below:

- 1- A man asks Imam Sadiq: "A muslim needs to sell his house. He goes to his friend and says: I am selling you my house. I prefer that you own the house and not someone else. On the condition that if I return the money within a year, you return my house." In response, the Imam says: "There is no problem." (Horramedi, *Bitā*, vol 18, p 19)

Consensus

Many religious authorities agree on the existence, validity, and legitimacy of the condition option. Allameh Helli says: "There is no disagreement between religious authorities regarding the validity of this condition." (Allameh Helli, *Bitā*, vol 11, p 38). Sheikh Ansari, in this regard, says: "There is consensus regarding the condition option." (Sheikh Ansari, 1415, vol 5, p 151) Saheb Kefayeh also claims agreement regarding the validity of the condition option. (Sabzevari, vol 1, p 465).

Consensus is one of the sources of religious law. Certainty is achieved when the religious authorities have the same view regarding an issue. From this consensus it is deduced that Islam's view is the same. However, this is difficult, or almost impossible to achieve.

The path of knowers

Noticing different societies, having various religions and beliefs, in contracts and deals, show that people sense the need for cancellation and removal of some contracts. And when this initial understanding is assumed, general rules and

guidelines are made for contracts. Then a second understanding is assumed that allows for the cancellation of what is mentioned in a contract, such as the condition option.

The condition option, unlike the *Majlis* condition and *Heyvan* condition, does not require *Taabod* and *Nass* for being proven. It is an issue that knowers understand instinctively, and utilize it in their contracts and deals without considering their religion or beliefs. And hence it is proven that not disproving the condition option is enough to confirm its legitimacy and necessity, regardless of whether there is a general or a specific *Nass* about it or not. (Khoey, 1414, vol 2, p 15).

And since this fact is connected to the Imam's time, it has religious legitimacy. (Mohaghegh Damad, Mostafa, Ghavaede Feghh, p 191). Especially that there is no ban regarding this matter from that authority.

Basis

The parties have made the condition option for a specific amount of time, without having a specific reason. Therefore their will is the entire reason for the creation of this option. In other words, it can be said that the condition option is an option that is created as a condition of the contract, since the cause for this option is the condition posed by the parties, and there is no disagreement between religious authorities regarding this option (Allameh Helli, *Bitā*, vol 11, p 38; and Sheikh Ansari, 1415, vol 5, p 151). Therefore, we can strongly state that the basis of this option is the will of the parties. And not loss nor any other element has any effect in its creation. It can be said that this option is based on the path of the knowers, and if a narrative exists, it confirms this path, and not another decree, in this case the condition option should be considered only for that specific case.

The necessity of specifying the time limit in the condition option

In the condition option, the duration is essential, but the length is not (Behjat, *Bitā*, vol 2, p 478). But it is allowable to make the condition for any duration, short or long (Allameh Helli, *Bitā*, vol 11,

p 41). It may be connected to the contract, or separate from it (Sheikh Ansari, 1415, vol 5, p 113).

Regarding whether the conditions option can be “lifetime” or not, there is disagreement between religious authorities and legal authorities. Some religious authorities object to the condition option being “lifetime”, saying that “lifetime” duration is not a specific length of time. (Zeineddin, 1413, p 73).

Dr. Katoozian, referring to article 401, has inferred that a “lifetime” condition option is not valid, since it invalidates the contract’s main motive which is necessitating the deal (Katoozian, Nasser, 1376, p 144-146). On the other hand, there are other religious authorities who consider this option being “lifetime” as legitimate, and in response to the objection posed, say that: A “lifetime” condition is valid since common law does not see any danger in this matter, otherwise *Hebbe* would be a risk contract; since it is a valid contract and the grantor always has the right to return, and there is no danger involved. (Irvani, Bitá, vol 2, p 21). Article 401 of civil law states: “If the duration is not specified for the condition option, the option and the contract are void.” Hence if the parties agree on an unknown duration (for example “until the *Hajis* return), the condition is void, and there is no disagreement regarding this matter. There is consensus regarding this matter, since with this condition, the contract becomes risky and is basically void, Abuhanife and Shafei have this same opinion (AllameHelli, Bitá, vol 11, pp 41 and 442; also Sheikh Ansari, 1415, vol 5, p 113; also Khomeini, Bitá, vol 4, p 308; and Behjat, Jameolmasael, vol 2, Bitá, 478).

Options based indirectly on will

In this section we analyze options that are not directly included in the contract, but characteristic or characteristics whose absence cause the creation of the option, such as the infringement option, or the inspection option.

A- Infringement option

Documents

Narratives

Regarding the documentations for this option, general narratives that necessitate acting on the conditions can be cited. One of them is discussed as an example:

Imam Sadiq says: Muslims should honor and act upon the conditions they set, unless the conditions contradict the Quran (Horrámeli, Bitá, vol 18, p 16).

Consensus

Sheikh Ansari says: For the main part, there is consensus regarding the infringement option, however the causes for negation of loss, as mentioned before, do not all have the qualification to issue a religious verdict, until they become strong and this is how it is done.

And since this fact is connected to the Imam’s time, it has religious legitimacy. (Mohaghegh Damad, Mostafa, Ghavaede Feghh, p 191). Especially that there is no ban regarding this matter from that authority.

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On the other hand, there are other religious authorities who consider this option being “lifetime” as legitimate, and in response to the objection posed, say that: A “lifetime” condition is valid since common law does not see any danger in this matter, otherwise *Hebbe* would be a risk contract; since it is a valid contract and the grantor always has the right to return, and there is no danger involved. (Irvani, *Bitā*, vol 2, p 21).

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