



Research Paper

Study of *Gharar* (Aleatory Contract) and Feasibility of Its Effective Scale on Transactions in Islamic Jurisprudence

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Abstract

Islam presents different solutions regarding earning money, meeting life's needs, and avoiding illegal earnings, of which is the financial actions in contracts and dealings. Shari'a sets regulations and rules to determine the validity or invalidity of these contracts. Gharar (aleatory contract) is one of the rules which is used to detect the validity of a contract. Although jurists consider it as an effective factor on the validity or invalidity of contracts, they believe that some contracts are valid due to gharar while some are not. This may show that the amount of gharar will be effective on the type of decree of contracts and possessions. The study of the jurists' opinions proves that they did not determine factors for the effective scale of gharar on contracts. Some believe that the custom might be a factor for determining the scale of gharar in validity or invalidity of contracts while others believe in its measure. The latter do not introduce a criterion to measure Gharūr. It seems that the custom or the measure is not a good criterion, but they should specify and limit it. Regarding the Qur'an and Sunnah, including the first and last verses of Sūrat al-Muzzammil as well as the two Hadiths "one third and one third is a lot" and "the food of two is enough for three," it can be said that the relation between the less and much gharar affecting the validity and invalidity of a contract is one third, i.e. the gharar which is less than one-third is pardoned, and the contract will be valid, but more than this amount is introduced as prohibited and its contract as invalid. Determining this rule is compatible with the opinion of the general view of jurists regarding the introduction of one-third as the limit between less and much.

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Extended Abstract

1- Introduction

One of the factors that make financial transactions and contracts between individuals vulnerable is the existence of gharar, in such a way that this issue is one of the fundamental and influential factors in the validity and invalidity of contracts. Despite the consensus among jurists that gharar is one of the reasons for the invalidity or at least corruption of some contracts (Sarakhsi, 1414H, 13/9; Ghrarnati, 1416H, 6/224; Nawawi, no date, 9/257; Mardawi, no date, 4/414; Najfi, 1404H, 22/386), and a part of the discussions on transactions in books and jurisprudential sources is dedicated to gharari sales and their invalidity, but it seems that the general nature of the concept of gharar has created another challenge, in such a way that the fate of many contracts, despite this gharar, has been placed in a state of ambiguity, and this is due to the fact that jurists have not introduced a specific criterion for determining the amount of gharar that affects the validity or invalidity of a contract, but some have delegated the judgment in this matter to custom, and others have generally considered excessive gharar as one of the reasons for the non-enforcement of contracts and have considered a small amount of it to be negligible and forgivable; however, they have not stated a criterion for determining the excessive amount.

2- Method

In this descriptive-analytical article, in addition to explaining the general concepts of the subject such as defining the concept of gharar, its ruling, the verses mentioned in this regard, and the views of jurists regarding the criterion for determining the amount of gharar along with criticism and review, based on the general principles of Sharia, a criterion is introduced to determine the amount of gharar to determine how much gharar is forgiven in Sharia.

3- Result

Based on induction in the texts of the Qur'an and Sunnah, including the first and last verses of Surah Muzammil, as well as

the two hadiths "al-thulth wa al-thulth kathir" and "ta'am al-athnayn kafi al-thalatha", it can be said that the measure and criterion between little and much gharar affecting the validity and invalidity of the contract is one-third, so that the Shari'a has forgiven less than 1/3 of gharar and ruled the transaction valid despite it, but has prohibited more than that and declared the contract based on it invalid. Determining this criterion is in line with the view of the majority of jurists who introduce one-third as the boundary between little and much.

4- Conclusion

- Jurists have considered the criterion of gharar affecting the transaction to be either custom or describing it as little and much. It seems that these two criteria are not well-defined, since custom is variable and is referred to when there is no other criterion, and little and much are not a clear criterion without determining their limits.
- Based on induction in the religious texts, it seems that the boundary between little and much is one-third, and with this criterion, it can be concluded that Sharia prohibits gharar more than one-third but forgives less than that.
- This criterion, in addition to its religious basis, is the view of some jurists in determining the boundary between little and much; in this way, jurists in their fatwas consider little to be tolerated and forgiven, and in the religious texts, the amount of little is determined to be one-third, therefore, gharar up to one-third is not effective in the validity of contracts.
- Among the texts supporting this view are verses 2, 3, 4, and 20 of Surah Muzammil and the two hadiths "al-thulth wa al-thulth kathir" and "ta'am al-athnayn kafi al-thalatha", the authenticity of which is agreed upon by all sects.



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6- Authors' contribution

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7- Conflict of Interest

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