



Research Paper

The Feasibility of Invoking the Rule of "Itlaf" in Contractual Damage Compensation

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Abstract

Compensation for damages resulting from breach of contract has gained increasing significance due to the expansion of contractual relations. In the Iranian legal system, in addition to the general rules of civil liability, Islamic jurisprudence (fiqh) rules are also influential in this area. One of these rules is the rule of "Itlaf" (unlawful destruction or consumption of another's property), which is considered one of the grounds for strict liability in fiqh. However, the application of this rule, rooted in strict liability, faces challenges in the realm of contractual liability. This research examines the challenges of invoking the rule of Itlaf in contractual damage compensation. This research addresses the challenges of: the difference in the nature of contractual and strict liability; the conditions for the realization of Itlaf in contractual liability; and how to reconcile the agreement between the parties in the contract with the general rules of strict liability regarding damage compensation. This descriptive-analytical research, after examining various fiqh viewpoints, identifies the viewpoint of Itlaf being a discretionary rule as the preferred approach. This viewpoint is more compatible with the approach of Iranian law and other legal systems. Considering the discretionary nature of this rule, it can be applied in both contractual and strict liability domains. Also, intentional breach of contract can be considered a type of Itlaf. Regarding the method of compensation for damages, the agreement of the parties can be reconciled with the general rules of strict liability. However, in invoking the rule of Itlaf in contractual damage compensation, its conditions and limitations must be considered. This research contributes to a deeper understanding of damage compensation in contractual relations within the Iranian legal framework, with potential implications for legal practice and policy.

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Extended Abstract

1- Introduction

Civil and contractual liability are among the fundamental topics in the legal system of any country. Among these, compensation for damages resulting from breach of contract has become doubly important, especially considering the ever-increasing expansion of contractual relations in today's world. In the Iranian legal system, in addition to the general rules of civil liability, the rules of Islamic jurisprudence (fiqh) can also play an effective role in determining the instances and methods of compensation for damages. One of these rules is the rule of Itlaf (unlawful destruction of another's property), which in Shi'a fiqh is recognized as one of the causes of strict liability. However, the application of this rule, which is rooted in tort liability, faces serious challenges in the area of contractual liability.

The main issue of this research is to examine the possibility and how to invoke the rule of Itlaf in contractual damage compensation. In other words, is it possible to use the rule of Itlaf to compensate for damages resulting from a breach of contract, despite the fundamental differences between contractual and tort liability? If the answer is yes, what challenges exist in this path and how can they be overcome? The importance of this research is that by answering the above questions, it helps to clarify the limits and boundaries of the application of the Itlaf rule in contractual liability and takes a step towards strengthening legal security and reducing contractual disputes.

The main challenges of this research are to examine the adaptation of the Itlaf rule in the field of contractual liability. These challenges are related to the fundamental difference between the two areas of contractual and tort liability, the realization of the conditions of Itlaf in contractual liability, and how to compensate for damages in this area. Considering that contractual liability is based on voluntary obligations and tort liability is

caused by aggression and harm to another, the question of how to extend the rules of tort liability, especially the rule of Itlaf, to the field of contract arises. Also, considering the special conditions for the realization of Itlaf, such as the existence of damage, the harmful act, and the causal relationship, the question arises whether these conditions can also be proved in contractual liabilities. For example, can intentional breach of contract be considered a type of Itlaf? Finally, considering that in contractual liability, the method of compensation for damages is usually subject to the agreement of the parties, in the case of invoking the rule of Itlaf, how to combine this agreement with the general rules of tort liability is also one of the challenges examined in this research. In the following, first, to explain the subject, the conceptualization of the Itlaf rule will be discussed

2- Method

This research was conducted using a descriptive-analytical method. In this method, first, the concepts and theoretical foundations related to the rule of Itlaf and contractual liability are examined, and then, using the content analysis method, the challenges of invoking the rule of Itlaf in contractual damage compensation are examined. In this regard, fiqh, legal, and jurisprudential sources have been used.

3- Result

The findings of this research show that the main challenges of invoking the rule of Itlaf in contractual damage compensation are:

1. Difference in the nature of contractual and tort liability: Contractual liability is based on obligations arising from the contract, while tort liability is



caused by damages resulting from a harmful act.

2. Conditions for the realization of Itlaf in contractual liability: In contractual liability, the conditions for the realization of Itlaf are different from tort liability.

How to combine the agreement between the parties in the contract with the general rules of tort liability regarding damage compensation: In some cases, the agreement of the parties in the contract conflicts with the general rules of tort liability regarding damage compensation

4- Conclusion

In this research, the challenges of using the rule of Itlaf in compensation for contractual damages were examined and the following can be concluded:

1. Limiting the rule of Itlaf to the cases mentioned in the religious texts and ignoring the rule of reason in guaranteeing the breacher of the contract leads to the misuse of the contract, corruption and instability in financial and commercial relations, and increases court cases and economic losses. Considering that the rule of Itlaf is discretionary and accepted by the wise, this rule can be used as a general and rational rule in various cases, including compensation for contractual damages.
2. Also, considering that the concept of the Itlaf rule is broader than Itlaf, it can be said that this rule includes any kind of damage that is inflicted on another. Therefore, according to the chosen viewpoint and the approach of Iranian law and other legal systems, the Itlaf rule is a general, rational, and universal rule that can be used in various cases, including compensation for contractual damages.
3. Considering the chosen viewpoint and the approach of Iranian law and other legal systems, the rule of Itlaf is a discretionary rule, therefore it can be said that this rule is a general and rational rule that can be used in various cases, including compensation for contractual damages. Also, considering that the concept of the Itlaf rule is broader than Itlaf, it can be said that this rule includes any kind of loss or damage that is inflicted on another.
4. In response to the challenges raised, it can be said that in the discussion of the difference in the nature of liability, considering that the rule of Itlaf is a general and rational rule, it can be applied in both contractual and tort liability. In the discussion of the conditions for the realization of Itlaf, it can be concluded that intentional breach of contract is considered a type of Itlaf; Because in this case, the obligor intentionally destroys the benefits arising from the contract. In the discussion of how to compensate for damages, it can also be commented that in the case of invoking the rule of Itlaf in contractual liability, the agreement of the parties can be combined with the general rules of tort liability. For example, the like or the price of the property can be determined according to the rules of tort



liability; But the time and method of payment should be determined according to the agreement of the parties in the contract. However, in invoking this rule in the compensation of contractual damages, its conditions and limitations must be considered.

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6- Authors' contribution

Mohammad Rasoul Ahangaran, an Professor, Department of Theology, Faculty of Farabi Campus, University of Tehran, Tehran, Iran is the corresponding author and the sole author of the article.

7- Conflict of Interest

Authors declared no conflict of interest