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A Study of the Status of Imperative Rules in Civil Code and Jurisprudence of Transactions in the Light of Imam Khomeini's Opinion[1]

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Research Paper

Introduction and problem statement

In the Iranian Civil Code, according to Imamiyah jurisprudence, the people's interest in property is limited to two types of right and ownership (Article 29). In its general sense, the right includes ownership (the right to property), ruling (the right of paternity, custody or guardianship of the ruler) and right in its special sense. Those who use the right against the ruling, what they mean by the right are the statutory rulings, and from their point of view, the word ruling refers to imperative rulings. It seems that the Article 29 of the Civil Law on the statutory rulings aims to include both ownership and financial rights, and in using the right, it intended its special meaning. For example, the right of usufruct or the right of easement expresses the relationship between the owner of the right and property; it is the same with the right of fencing with stones, the right of preemption, and the right of goodwill. Now the question is that if the person's object of the right is another's act, can the relationship between the right holder and the act be considered as a statutory ruling and subject to Article 29? Article 214 of the Civil Code considers the object of a contract to be the property or act of obligation. If by virtue of a contract, according to Article 768 of the Civil Code, a person undertakes to pay certain specified profits to another for a specified period of time, should the contract be considered as the cause of an imperative or statutory ruling? In addition to the obligations arising from the contract, the right to act may be created by non-contractual requirements. In Article 317 of the Civil Code, the reference of the owner to the usurper who does not have the property in his hands indicates the right of the owner over the act of the usurper to take the property from the person who has the property in his hands and return it to the

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owner. Doubts about the imperative or statutory nature of the ruling can be raised regarding the condition about performance of an act, the condition of commitment to the benefit of a third party in Article 196, the marriage of a virgin without the permission of her guardian, guarantee of discharging obligations, wife's alimony, usurpation of right or even the interpretation of Article 959.

Identifying the imperative or statutory nature of the rulings is not only useful in theory, but also has significant uses in practice. For example, if we consider a contract to be the cause of a mere imperative ruling, the obligation will disappear with the death of the obliged and the obligee will not have any rights in the estate of the deceased. In addition, if we consider the legal condition to be the cause of a pure imperative ruling, the violation of it is correct, and if we consider it as a statutory ruling, violation of it can lead to the nullity or non-influence of the secondary legal act. Also, in a pure imperative ruling, such as a vow to act, there is no right to claim by the obligee, and the obligation of the obliged is possible only in terms of *enjoining good and forbidding wrong*. In response to the above questions, some considered ruling as imperative and some considered it as statutory. Imam Khomeini is among those who consider rulings as both imperative and statutory; of course, he limited the statutory ruling to the right to claim by the person in whose favor a condition is made. Of course, Imam did not limit himself to this opinion, and in some cases, he made the imperative or statutory nature of the ruling subordinate to the act. Accepting this opinion can be a big step in clarifying the rulings on obligations and especially the separation of property rights from the rights of obligations.

Research Background

Despite the abundance of jurisprudential debates about the place of imperative rulings, legal scholars have refused to present a detailed discussion on this matter in books related to contract law. For example, Katouzian has implicitly mentioned the issue by separating responsibility from indebtedness; but he did not directly write anything about the imperative rulings in the contracts. Also, in the interpretation of Article 959 of the Civil Code, Shahidi included the right in the meaning of the ruling; but he did not mention the nature of this ruling and the rulings about it. However, in his book, General Theory of Terms and Obligations in Islamic Law, and in the discussions about the condition of the act and of course, the legal status of possessions "man alayeh Al-Khiyar" (Someone against whom there is an option), Mohaghegh Damad has separated the imperative ruling from the statutory ruling and studied the place of each of them. He considers the distinction between the effects of these two rulings and of course identifying the origin of their creation as one of the most valuable topics in the philosophy of Islamic law; discussions that have distinguished Iran's legal system in terms of the formation and effects of obligations from Western legal systems.

Research Methodology

In this research, an attempt has been made to distinguish between the two areas of imperative and statutory rulings and to identify the effects of each by using the investigation and analysis of the opinions and works of jurists and lawyers in the field of coercive and contractual obligations. In this regard, the authors of the article have chosen a library method with a descriptive-analytical approach to obtain research resources and information.

Discussion and conclusions

The obligations and property are considered two prominent actors of civil rights. Knowing the nature and effects of imperative and statutory rulings can be helpful in better distinguishing these two legal types. Examination of the nature of imperative rulings shows that the object of this type of ruling is firstly the act of obliged person and secondly it may be the subject of the act, property or performance. Accepting this matter, many examples in the civil law can be found as imperative rulings, among which we can refer to the condition about performance of an act, the ruling related to the usurper of the right, the obligation of the prior usurper (the usurper who does not have the property in his hands), giving to the relatives, article 959 of the Civil Code and the cases related to guarantee of discharging obligations. The importance of differentiating the imperative rulings from statutory rulings is revealed at the stage of effects, which means that in general, the ordering of imperative ruling is dependent on the existence of general conditions of obligation; but for the ordering of statutory ruling, only the existence of eligibility is sufficient. From this general effect, other minor effects can be inferred, such as the non-attachment of the imperative ruling to the estate and the possibility of obliged reference to the debtor after payment. By examining the works of Imam Khomeini and the opinions of other Imamiyah jurisprudents regarding imperative rulings, we can come to the conclusion that considering the possibility of subrogation in obligations irrespective of intention, the guarantee of discharging obligations, which refers to imperative rulings, is not an exception, and its rulings can be extended to other customary guarantees. In this way, the guarantee of discharging obligations, unlike the contractual guarantee, which is a transfer of the obligation (responsibility), can be considered as an additional obligation.