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**A Jurisprudential and Legal Feasibility Study on Granting the Right to Change a Defective Good to the Buyer with Emphasis on Imam Khomeini's Viewpoints**

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Research Paper


**1. Introduction and problem statement**

Delivering the goods in good condition and in accordance with the contractual conditions to the buyer is one of the seller's obligations in the sales contract. In case of breaching of this obligation on the part of the seller, in Islamic jurisprudence, in order to protect the rights of buyer, the right of canceling the transaction or accepting the defective goods with compensation is accepted. Iran's legislator has also recognized the aforementioned rights according to Article 422 of the Civil Code. But the question that arises in this regard is whether the buyer can oblige the seller to deliver the unbroken goods instead of exercising the right of cancellation and receiving the price of the transaction or receiving the difference between the defective and healthy and unbroken goods? And, so to speak, has the right to substitute goods? In this regard, this article, with the aim of answering this main question, aims to investigate the possibility of granting the right of substitution to the buyer of defective goods from the point of view of jurisprudence and law. In this article, firstly, it is tried to use the opinions and fatwas of the early and late jurists, especially Imam Khomeini, regarding the buyer's right to substitute defective goods. Secondly, the benefits of the right to substitution defective goods should be discussed in comparison with other methods of compensation, including the compensation and cancelation. Thirdly, it should be clearly explained that on the assumption of acceptance of the right of substitution, what bases and jurisprudential and legal solutions strengthen the existence of this right of the buyer. Fourthly, the scope of the buyer's right to substitute the goods should be explained in terms of the one of a species of general or some specified nature of the defective goods. And fifthly, we should take a look at the position of the right to substitution defective goods in jurisprudence and law.

**2. Research Methodology**

This article is written with a descriptive and analytical method. In this regard, it has been tried by referring to the library and internet sites, using the available sources, including Persian, Arabic and Latin books and articles, and also according to the latest legal developments and legislation in this field, the materials and data of the case need to be extracted in order to answer the questions raised in the research and by describing and analyzing the data, different theories and

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approaches will be explained separately in this field and ultimately the desired and expected results will be obtained.

### **3. Discussion and Conclusion**

#### **3.1. Advantages of Substitute Goods**

Accepting the right to substitute the defective goods for the buyer actually not only leads to the full implementation of the contract for the buyer, but also allows he/she to reach the final and primary goal of concluding the contract, which is the access to unbroken goods. Apart from this issue, the right to substitute defective goods has many advantages, including first of all, the right to substitute the buyer's access to unbroken goods has been accelerated and facilitated by referring to the manufacturer. Secondly, it has prevented the delay of the lawsuit, the expansion of the volume of cases in the judiciary, and also the payment of exorbitant costs related to the cancellation lawsuit and compensation. And thirdly, there should be no restrictions on the right of cancellation and demand compensation that the defect was hidden and present during the contract and that there was no urgency to exercise of cancellation in the right of replacement. And fourthly, it makes the customer happy to buy and creates a competition between producers.

#### **3.2. The scope of the right to substitute goods**

In terms of the scope of the right of substitute, it seems that the jurists have explicitly accepted the right to substitute the unascertained defective goods in the contract of lease and sale, and in the case of the sale of the ascertained defective goods, they have limited the right of the unsatisfied buyer to cancellation or compensation. Legal writers in unascertained goods have also emphasized the possibility of obliging the seller to submit a safe sale. With this description, relying on Article 10 of civil Law and the rule of "contracts subject to intention", the right of substitute goods can be recognized by concluding a guarantee (indefinite contract) or any other type of contract. And in the case where the defective goods is ascertained, relying on this principle, it is possible to agree to exchange through a condition included in the contract or substitution of different obligation according to paragraph 1 of article 292 of the civil law.

#### **3.3. Jurisprudential and legal foundations of the right to substitute goods**

The buyer's right to substitute defective goods is based on jurisprudence and legal principles, including that firstly, according to the authority in Article 3 of the Civil Liability Law, the courts can determine the method of compensation for the buyer of defective goods according to the conditions and circumstances, and in case of replacing the goods If the defect is fairer and wiser, they should rule on the require to substitute it.

Secondly, the principle of require to performance of obligation and necessity of fulfilment of obligation Cause that the seller substitute the defective goods. Of course, in the case of an ascertain defective goods, relying on this principle and the approach of some jurists such as Imam Khomeini and al-Kashef al-Ghata, in the case where the ascertain goods has similar goods substitute is possible, the substitute of goods can be justified. Especially, it is better used in restoring the former situation of the affected buyer. Thirdly, the custom and business practice of the sellers of goods and fourthly, the foundation and practice of rationality, since the right of

substitute is a pleasant, customary, rational and low-cost matter, it is the basis for the right of substitute, and in the case of ascertain goods, common sense and commercial practice for ease of description They clearly ignore it. Fifthly, in addition to the aforementioned principles, the necessity of establishing a relative economic balance in the contract also strengthens the existence of the right of substitute.

#### **3.4. The approach of Iran laws towards the right to substitute goods**

In Iran laws, there are multiple approaches in the field of right of substitute goods. First, in the civil law, as a general law, the right of substitute is recognized only in the case of an unascertained defective goods. In this law, in the case of breach of the description and the adjective condition, the buyer has the right to substitute only in unascertained goods. Secondly, according to special laws, including; Consumer protection law approved in 1388, in unascertained goods, the buyer has the right to substitute. In the car consumer protection law approved in 1386, the lawmaker, with strict and complex preconditions, according to Article 4 of this law, made the right of substitute as well as the right of cancellation for the buyer and canceled the verdict stipulated in the civil law regarding the defect. However, the legislator has not made a distinction between the ascertain and unascertained goods in this context and has accepted these rights in an absolute manner.

#### **4. Suggestion**

It is necessary to amend the current laws and provide a coherent and unified dictum in the current laws in order to avoid confusion and provide more protection for the rights of the consumers, especially in removing the preconditions for substitute and even cancellation (although the restriction on the right of cancellation is for the purpose of maintaining the contract) in the case of cars, which is against the legislator's goal of protecting the car consumer, should be provided. This will improve the quality of production and prevent possible harms to the buyer and even the producer of defective goods, who spends a lot of money on producing such defective goods. And also it will prevent the damage inflicted by the defective goods to the environment.

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