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Research Article

An Analytical Study of Contract Termination Options in Afghan Law

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Abstract. Contract termination options (Khiyarat) represent one of the most significant aspects of civil law, granting the contracting parties the legal right to unilaterally rescind a contract under specific and legally prescribed conditions. This legal mechanism is designed to uphold justice within contractual relations and to prevent potential harm resulting from misalignment between the contract's terms and the true intent or circumstances of the parties involved. The relevance of examining Khiyar in the legal system of Afghanistan has grown increasingly critical, particularly in light of ongoing legal reforms and the imperative to enhance legal certainty in civil contracts. The present article aims to provide a comprehensive and scholarly analysis of contract termination options as regulated under the Afghan Civil Code, with specific reference to the principles of Hanafi jurisprudence. By elucidating the various types of Khiyar, their conditions of applicability, legal consequences, and relevant judicial practice, this study identifies existing legislative gaps and proposes legal reforms to improve coherence and practical implementation. The research employs a descriptive-analytical methodology, relying on statutory sources, Islamic jurisprudential texts, and relevant legal scholarship. A comparative analysis is also conducted between Afghan legal provisions and the doctrines of classical Hanafi jurisprudence. Findings indicate that, despite the diverse and extensive

presence of Khiyar provisions in Afghan law, ambiguities in definition and inconsistencies with Hanafi jurisprudence pose challenges to their uniform application. Accordingly, the article recommends targeted legal reforms to clarify key concepts and ensure the effective and harmonized enforcement of termination rights, thereby safeguarding contractual justice and enhancing the legal security of transactions.

Keywords: Khiyar, Afghan Law, Civil Code, contractual obligations, legal certainty, legal reform, Hanafi jurisprudence.

Abstrak. Transformasi digital di sektor perbankan mendorong lahirnya layanan mobile banking seperti BRImo milik PT. Bank Rakyat Indonesia (Persero) Tbk yang menawarkan kemudahan transaksi keuangan bagi nasabah. Namun, di balik inovasi tersebut, timbul persoalan pelik mengenai kepatuhan terhadap prinsip minimalisasi data sebagaimana diatur dalam Undang-Undang Nomor 27 Tahun 2022 tentang Pelindungan Data Pribadi (UU PDP) dan General Data Protection Regulation (GDPR) 2018. Rumusan masalah penelitian ini berfokus pada kesesuaian mekanisme persetujuan pemrosesan data pribadi dalam aplikasi BRImo dengan prinsip minimalisasi data, serta akibat hukum dari ketidaktaatan terhadap prinsip tersebut. Penelitian dilakukan dengan pendekatan yuridis normatif melalui telaah peraturan perundang-undangan, doktrin, dan literatur hukum terkait, serta pendekatan yuridis sosiologis. Hasil penelitian menunjukkan ketidakpatuhan BRImo terhadap prinsip minimalisasi data tercermin dari praktik bundled consent tanpa pilihan granular, minimnya transparansi terkait tujuan dan retensi data, serta terbatasnya kontrol pengguna untuk mencabut atau mengubah persetujuan. Kondisi ini menggeser persetujuan data dari fungsi substansial menjadi sekadar formalitas administratif, yang pada akhirnya berpotensi menimbulkan sanksi pidana, administratif, dan risiko reputasi bagi penyelenggara layanan. Sebagai langkah korektif, diperlukan penerapan granular consent, dashboard privasi interaktif, kebijakan retensi data yang ketat, penunjukan Data Protection Officer (DPO), dan edukasi internal untuk menjamin pemrosesan data yang lawful, fair, dan proportionate.

Kata Kunci: pelindungan, data pribadi, minimalisasi data.

INTRODUCTION

In legal systems, contracts are regarded as the primary instrument for regulating legal and economic relations between individuals. The conclusion of contracts is a vital and commonplace practice, without which social and economic interactions would face serious challenges. Under civil law, the principle of *pacta sunt servanda* (contracts must be honored) prevails, meaning that once a contract is concluded, it must be executed and cannot be rescinded unilaterally, thereby ensuring stability and predictability in contractual relationships (Majalla, art. 114). However, contracts may encounter certain obstacles or unforeseen circumstances that justify the legal termination of the agreement by one or both parties (Al-Zohili, 2011). In such situations, the legal institution of *Khiyar* (contract termination options) plays a fundamental role.

In Afghan civil law, *Khiyar* mechanisms are essential for safeguarding justice and maintaining balance in contractual relations. These legal tools allow contracting parties under specific circumstances and either by mutual agreement or statutory provisions to lawfully rescind a contract and thereby prevent potential harm (Civil Code of Afghanistan, arts.). A precise understanding of the types of *Khiyar*, the

conditions under which they may be exercised, and their legal consequences is crucial for legal professionals, judges, and contracting parties alike.

The primary aim of this article is to conduct a comprehensive examination of the different types of Khiyar provided under the Afghan Civil Code, analyzed in light of both statutory law and Islamic jurisprudence. The significance of this subject lies in the fact that many contractual disputes stem from a lack of awareness regarding the rights and mechanisms for contract termination, which in turn leads to prolonged legal conflicts.

This research adopts a descriptive-analytical methodology. Data were collected through library-based research, drawing on statutory texts, classical Hanafi jurisprudential works, and authoritative legal references. Additionally, a comparative legal study has been undertaken to contextualize the role of Khiyar within Afghan law.

The findings indicate that classical Hanafi sources enumerate varying numbers of termination options (Khiyarat). Some treatises identify up to seventeen distinct forms, although only a limited number—such as Khiyar al-Shart (option by condition), Khiyar al-Tayin (option of determination), Khiyar al-Ruyah (option upon inspection), and Khiyar al-Ayb (option for defect) are expressly codified in the Afghan Civil Code. Other forms of Khiyars are addressed indirectly by deferring to Hanafi jurisprudence (Al-Zohili, 2011). For instance, Majallat ul-Ahkam al-Adliyya, a foundational reference in Hanafi Fiqh, recognizes only seven forms: Khiyar al-Shart, Khiyar al-Waṣf (option for description), Khiyar al-Naqd (option for immediate payment), Khiyar al-Tayin, Khiyar al-Ruyah, Khiyar al-Ayb and Khiyar al-Ghabn (option due to deception or loss).

This article limits its scope to those Khiyarat (options) explicitly codified in the Afghan Civil Code, excluding others which are merely referenced or found in juristic literature with inconsistent enumeration. The study also highlights that each codified Khiyar comes with specific legal conditions and consequences which must be meticulously observed in practice. Ultimately, raising awareness and understanding of termination options can significantly reduce contractual disputes and contribute to the effective resolution of legal claims arising from contractual obligations.

Concept and Definition of Khiyar (Contractual Option)

The Arabic term Khiyar derives from the triliteral root “kh-y-r,” which linguistically denotes choice, selection, or preference. According to Ibn Manzur, “a Khiyar is the opposite of compulsion; it refers to what a person selects or prefers between two or more things by his own will” (Ibn Manzur, 1994). Thus, Khiyar in its lexical sense refers to the act of choosing freely without coercion.

In legal usage, Khiyar refers to the discretionary right granted to one or both parties to a contract either by mutual agreement or by law to rescind or uphold a contract. Al-Kasani defines it as “the legal authority to annul a contract after its conclusion” (al-Kasani, 1910, Vol. 5, p. 264). This aligns with the Hanafi school’s definition of Khiyar as “the right to terminate a contract after its formation” (al-Sarakhsi, 1993, Vol. 12, p: 104). In other words, Khiyar is a legal power granted to one

or both contracting parties or in some cases, to a third party to unilaterally cancel a binding contract under certain legal circumstances (Group of Authors, 2008).

The semantic (linguistic) and technical (legal) meanings of Khiyar are closely related. However, the linguistic meaning refers generally to the ability to choose, which applies broadly in all areas of social interaction. The legal definition, by contrast, is confined to the contractual context and implies the power to rescind or accept a contract after its conclusion. Typically, this is applied in civil not commercial contracts.

Under the law of contracts, the general rule is that contracts are binding (al-aqd lazim), meaning that once concluded, neither party may unilaterally terminate the agreement. The only exception to this rule is the presence of a recognized Khiyar, which renders the contract revocable (ghayr lazim). All contracts are presumed binding unless one of the various forms of Khiyar applies (Kasani, 1910).

Khiyar may originate in two ways:

- (1) By mutual agreement, such as Khiyar al-Shart (stipulated option) or Khiyar al-Ta'yin (option of determination), where the parties agree within the contract or by separate arrangement that one party shall have the right of rescission;
- (2) By operation of law, such as Khiyar al-Ru'yah (option upon inspection) or Khiyare Ayb (option for defect), where the right to revoke is provided by law regardless of prior agreement.

For instance, if a buyer purchases a product and discovers a defect after the sale, the law automatically grants the buyer a Khiyar to either annul the contract or accept the product despite its flaw.

Types of Options (Khiyarāt) in Afghan Law

There exists a noticeable divergence regarding the classification and number of contractual options (Khiyarat) between the Afghan Civil Code and traditional Islamic jurisprudence (fiqh), as well as among various Hanafi legal sources themselves. For instance, classical juristic works such as Bada'i' ul-Şana'i' and Mukhtaşar ul-Quduri mention only four main types of Khiyars. In contrast, Majallat ul-Ahkam al-'Adliyya enumerates seven kinds, and other sources cite up to seventeen distinct categories of contractual options.

However, under the Afghan Civil Code, only four types of options are formally recognized as legal instruments intended to protect the rights of contractual parties. These include:

1. Khiyare Shart (Stipulated Option)
2. Khiyare Ta'yin (Option of Designation)
3. Khiyare Ru'yah (Option Upon Inspection)
4. Khiyare Ayb (Option for Defect)

Among these, Khiyare Shart and Khiyare Ta'yin are established based on mutual agreement between the contracting parties, typically stipulated either in the main contract or in a separate clause. In contrast, Khiyare Ru'yah and Khiyare Ayb arise automatically by operation of law, without any requirement for prior agreement. Each of these options is governed by specific legal conditions and distinct effects, either expressly outlined or implicitly recognized in the Afghan Civil Code. A clear

understanding of these options is essential for legal practitioners, judges, and contracting parties alike, as they play a pivotal role in managing the rescission of contracts and preventing disputes.

In this section, we will examine in detail the four contractual options as provided under the Afghan Civil Code: *Khiyare Sharṭ*, *Khiyare Ta'yin*, *Khiyare Ru'yah*, and *Khiyare Ayb*.

1. Stipulated Option (*Khiyare Sharṭ*)

The stipulated option (*Khiyar al-Sharṭ*) is one of the most significant forms of contractual options, commonly agreed upon explicitly or implicitly by the parties at the time of contract formation. This option grants either or both parties the right to unilaterally rescind the contract within a predetermined period without the need to justify the revocation. In essence, this right functions as a contractual safeguard, allowing the parties to dissolve the agreement should circumstances change or if either party loses interest in proceeding with the contract.

According to Article 652 of the Afghan Civil Code, the contracting parties may, at the time of concluding the contract or subsequently, stipulate a condition allowing either party to rescind the contract within a maximum of three days. This provision applies to all types of contracts, except for *waqf* (endowment), *kafalah* (suretyship), and *hawalah* (transfer of debt) (Civil Code of Afghanistan, art. 652).

Similarly, Article 300 of the *Majallat ul-Ahkam al-'Adliyya* stipulates that it is permissible for either or both the seller and the buyer to reserve a stipulated option to accept or annul the contract within a known period (*Majalla*, art. 300). Unlike the Civil Code, however, the *Majalla* does not specify a time limit for exercising this option. Article 654 of the Civil Code authorizes the inclusion of this option in favor of either or both parties.

Article 301 of the *Majalla* clarifies that the party holding the option is considered legally empowered to rescind the contract within the agreed-upon period. Moreover, as per Article 302 of the *Majalla* and Articles 656 and 657 of the Civil Code, the exercise of this right may be expressed orally or implicitly through conduct. For example, if the party declares verbally "I rescind the contract," it constitutes an oral revocation. Similarly, words of satisfaction such as "I approve" or "I am satisfied" signal confirmation (*Majalla*, arts. 302–303).

Tacit approval, or constructive affirmation, is inferred from conduct that reflects satisfaction with the contract—such as the buyer making a disposition over the purchased item (e.g., renting or pawning it). Conversely, if the seller, who holds the option, disposes of the item in a manner indicating withdrawal, this is considered a constructive revocation (*Majalla*, art. 304).

A key feature of *Khiyar al-Sharṭ* is its temporal limitation. Once the stipulated period expires, the option lapses, and the contract becomes binding. Although both the Civil Code and Hanafi fiqh recognize this option, they typically limit its duration to three days, except in the case of special contracts such as *waqf*, suretyship, and debt transfer (al-Kasani, vol. 5, p. 196; Civil Code, art. 652).

The legal consequences of stipulating this option differ depending on who holds the right. If only the seller retains the option, the sold item does not leave their

ownership and remains their property during the period. However, if only the buyer holds the option, the item is deemed transferred to their ownership. If the item perishes after delivery, the buyer is liable to pay the agreed-upon price (Majalla, arts. 308–309; al-Kasani, 1328, p. 265; al-‘Aynī, 1420, vol. 8, p. 55).

In practice, the stipulated option is frequently used to provide additional reassurance to contracting parties, especially in sales contracts where one party may wish to reconsider their position within a short time frame after conclusion of the agreement (Nowruzi, 2016, p. 128).

Finally, the stipulated option is not inheritable. If both parties have the option and one of them dies during the period, the right lapses for the deceased party, and the contract becomes binding for their heirs. However, the surviving party retains the option until the end of the term. If they do not exercise it, the contract becomes fully binding for both parties upon expiration (Civil Code, art. 660; Majalla, art. 306).

2. Option of Designation (Khiyar Ta‘yin)

The Option of Designation (Khiyar al-Ta‘yin) refers to an agreement between the seller and buyer whereby one of the parties is granted the right to choose, within a period not exceeding three days, one item among several specified items of known and fixed prices. Under such an arrangement, the buyer may select any item they desire from among those offered, or alternatively, the seller may retain the right to determine which item will be delivered to the buyer within the same time frame. Should either party refuse to make the selection within the agreed period, the option may be enforced upon them.

According to Article 316 of the Majallat ul-Ahkam al-‘Adliyya, “If the seller specifies the prices of two or more valuable items and grants the buyer the right to choose any of them for the stated price, or if the buyer allows the seller to determine which item shall be delivered, the contract is valid, and this is known as the Option of Designation (Khiyar al-Ta‘yin)” (Majalla, art. 316).

For instance, if a seller tells the buyer: “I offer you this sheep for 5,000 Afghanis, that one for 6,000, and the third for 8,000 Afghanis; you may choose any one you wish within three days,” and the buyer accepts, the buyer is then granted the Option of Designation. Conversely, if the buyer says: “I am purchasing one of these three sheep for 6,000 Afghanis and give you the right to choose which one to deliver within three days,” and the seller agrees, the seller then acquires this option. In both scenarios, the contract is valid and binding with respect to the agreed-upon item once the option is exercised.

The Civil Code of Afghanistan provides additional guidance on this form of option in Articles 663–664, stipulating that the number of items subject to this option must not exceed three, and the exercise period must not surpass three days. Furthermore, the duration is calculated from the moment mutual agreement is reached (Civil Code of Afghanistan, arts. 663–664).

Until the option is exercised, such a contract is considered non-binding (ghair-lāzim). However, if the party entitled to the option exercises it whether explicitly or implicitly the contract becomes valid and binding with respect to the selected item.

This interpretation is consistent with Islamic jurisprudence, particularly the Hanafi Fiqh.

The Option of Designation is inheritable, as affirmed by Article 657 of the Civil Code: if a buyer entitled to this option dies during the designated period, their heirs may choose one of the specified items. This provision aligns with Article 19 of the Majalla, which also affirms the transferability of the option to heirs.

3. Option of Inspection (Khiyar al-Ru'yah)

One of the legally recognized types of contract termination options in Afghan civil law and Islamic jurisprudence is the Option of Inspection (Khiyar al-Ru'yah). This option allows a buyer who purchases an item without having previously seen it to annul or confirm the contract after visual inspection of the subject matter. As defined in Islamic jurisprudence, Khiyar al-Ru'yah arises when a buyer has not seen the subject matter at or before the time of contract formation and is entitled to either ratify or rescind the agreement upon inspection (al-Quduri, 1997).

Although the Afghan Civil Code does not explicitly define Khiyar al-Ru'yah, its provisions are rooted in classical Hanafi doctrine. According to Article 320 of the Majallat ul-Ahkam al-'Adliyya: "A person who purchases something without seeing it retains the option (Khiyar) until they have seen the object; upon inspection, they may choose to affirm or rescind the sale. This is known as the Option of Inspection" (Majalla, art. 320). Importantly, this right is exclusive to the buyer; a seller who sells unseen goods does not possess this option (al-Marghinani, 2004).

The concept of "inspection" is further clarified in Article 323 of the Majalla, which states that: "What is meant by inspection (ru'yah) in this context is knowledge of the condition and essential characteristics of the object such that its primary purpose can be understood." For example, viewing the outer surface of a simple fabric may suffice, whereas for patterned clothing, the patterns must be seen. In case of livestock, palpating the back may be sufficient, while in edible goods, tasting constitutes ru'yah.

In practice, Afghan civil law adopts the opinion of Hanafi and Maliki jurists by limiting Khiyar al-Ru'yah to buyers only. For instance, Article 1039 of the Civil Code provides:

"If a contract stipulates that the buyer has complete knowledge of the subject matter, then the buyer's right to void the contract based on ignorance is extinguished, unless deceit can be proven."

Similarly, Article 1044 states: "A person who purchases unseen property has the right to terminate the contract upon seeing it, even if they had verbally agreed to it beforehand. The seller does not hold this right for goods sold unseen."

According to Article 680 of the Civil Code, the Option of Inspection is extinguished upon:

- visual confirmation and explicit or implicit acceptance of the item;
- death of the option-holder (i.e., the buyer);
- destruction of the object in whole or in part;
- buyer's conduct that is incompatible with the option (e.g., disposal or encumbrance); or

- third-party legal claims affecting the object.

This option is non-transferable by inheritance, and terminates upon the death of the buyer (al-Marghinani, 2004). According to Article 681, exercise of the option whether through explicit or implicit expression, verbally or by conduct is sufficient to annul the contract; judicial approval or the seller's consent is not required.

Moreover, Article 676 of the Afghan Civil Code outlines specific circumstances in which Khiyar al-Ru'yah applies without prior stipulation:

- Sale of tangible goods not categorized as fixed debts;
- Lease contracts of tangible items;
- Partition of non-fungible property;
- Compromise agreements involving tangible assets.

Accordingly, in contracts involving specific and individual property, visual inspection is considered a condition for the contract's final validity. In the absence of such inspection, the law automatically grants the buyer a unilateral right of rescission, even without an express contractual clause.

4. Option of Defect (Khiyare Ayb)

In legal theory and contractual jurisprudence, the principle of contractual soundness (*salāmah*) presumes that the object of sale is free from defects unless explicitly stated otherwise. The sale of an item without a disclaimer of defect or clarification regarding its condition implies, by default, that the subject matter is free from any material defect. While the Afghan Civil Code does not provide a formal definition of the Option of Defect (*Khiyare Ayb*), it does contain substantive provisions governing its application.

According to Article 682 of the Civil Code: "The right of rescission on the basis of a defect is established without a prior stipulation." This provision indicates that the *Khiyare Ayb* arises by operation of law and does not require express agreement between the parties at the time of contract formation.

In Hanafi jurisprudence, this option entitles a buyer to rescind the contract upon discovering a pre-existing defect in the object of sale. The buyer may either return the item or retain it as-is. However, unlike the Shāfi'ī school, the Hanafis do not generally permit the buyer to claim a monetary compensation for the defect while keeping the item (al-Quduri, 1997, p. 82; al-Marghinani, 2004). This principle is echoed in Article 687 of the Civil Code, which provides that: "The possessor of the defective item may not claim a reduction in the price while keeping the item, unless it is impossible to return the item and no replacement has been delivered."

From both legal and jurisprudential perspectives, a defect is defined as any hidden or apparent flaw that diminishes the value or utility of the object of sale. The standard of recognition for defects is determined by commercial customs and expert opinions within the marketplace.

As stated in Article 684 of the Civil Code, a defect gives rise to a right of rescission if it:

1. Existed prior to the contract,
2. Materially affected the value of the item,

3. Was unknown to the buyer, and
4. Was not waived by the seller via a clause disclaiming liability.

The Afghan Civil Code, aligned with Islamic law, permits defects to be either apparent or latent, so long as they affect the subject matter's value or functionality. For the Khiyare Ayb to be exercised validly, the buyer must discover the defect before confirming the sale, or promptly upon discovery if the defect was hidden (Nowruz, 2016).

The Option of Defect serves as a protective mechanism for buyers and a guarantor of fairness in commercial transactions. It allows for remedial action in the event of concealed or impactful defects, thereby contributing to market integrity. According to Article 668 of the Civil Code, the Khiyare Ayb is nullified in the following instances:

- Destruction of the item;
- Increase or decrease in its nature or condition;
- Waiver of the option by the holder;
- Express or implied acceptance of the defect;
- Buyer's material interference with the item prior to discovering the defect.

Importantly, this option is transferable by inheritance. As stated in Articles 688–689, the right to rescind on grounds of defect does not lapse upon the buyer's death but passes to their legal heirs.

Conditions for Establishing the Option of Defect

To invoke the Khiyare Ayb, the following conditions must be met under Afghan law and Hanafi jurisprudence:

1. Existence of the Defect Prior to Contract Formation or Possession:
According to Article 682, the defect must have existed before the contract or emerged immediately after possession in order to qualify for rescission.
2. Lack of Awareness by the Buyer:
The buyer must have no knowledge of the defect at the time of contract or delivery. Majallat al-Ahkam al-'Adliyya affirms in Article 323 that: "A person who purchases an item knowing all of its defects has no legal grounds to claim the option of defect." For instance, if someone knowingly purchases a lame animal, acknowledging all its flaws, they forfeit the right to later annul the sale based on those defects.
3. No Disclaimer by the Seller:
The seller must not have stipulated a release of liability for any defects. If the contract explicitly states that the buyer accepts the item "as is," then Khiyare Ayb may not be asserted (Civil Code, art. 684).
4. Effect on Market Value:
The defect must materially impact the value of the item from a commercial perspective, as determined by prevailing trade practices.

1. Legal Effects of Contract Rescission Based on Options (Khiyarāt)

Rescission of a contract by virtue of Khiyarat (options) represents one of the most significant legal mechanisms that allow parties to release themselves from

binding contractual obligations under specified conditions. The legal effects of such rescission directly influence the parties' rights and obligations, and play a critical role in the enforcement of related legal rulings.

2. Restoration to the Original Status (Principle of Mutual Restitution)

The fundamental effect of contract rescission is the restoration of the parties to their pre-contractual status. This principle, known in legal terminology as "mutual restitution" or "quid pro quo", requires each party to return what they have received to the other party. The aim is to prevent any party from suffering loss or unjust enrichment resulting from the contract.

In Afghan law, Article 743 of the Civil Code explicitly stipulates that contract rescission necessitates the return of the exchanged considerations (Civil Code, Art. 743). Special attention must be given to situations where the returned property has been lost, damaged, or consumed. In such cases, compensation in lieu of exact restitution is considered appropriate (Nowruz, 2016).

3. Discharge of Reciprocal Obligations and Termination of Contractual Relationship

Rescission terminates all reciprocal obligations arising from the contract. From the moment of rescission, neither party is bound to perform any further contractual duties, and any ongoing performance obligations cease. This ensures that a party exercising the option to rescind is not compelled to bear further burdens or consequences of the contract (Rahimi, 2018).

4. Liability for Damages Resulting from Rescission

If rescission is exercised improperly or abusively, or if the party initiating rescission causes unnecessary harm, that party may be held liable to compensate the other for damages incurred. This principle serves to prevent arbitrary or malicious use of Khiyar rights and safeguards fairness in contractual relations. Afghan law contains provisions addressing damages arising from contractual rescission, ensuring appropriate remedies are available to injured parties (Zanjani, 2010).

Legal Issues and Practical Challenges of Khiyar in Afghan Law

Although Khiyarāt (contractual options) are recognized as legal instruments under the Civil Code of Afghanistan, several practical and judicial challenges have arisen in their application. This section examines these issues in detail.

1. Lack of Precise and Unified Definitions and Regulations

One of the most significant problems is the absence of clear, comprehensive, and consistent definitions of the various Khiyarāt in the Afghan Civil Code. This gap has led to divergent and sometimes contradictory interpretations across different courts, undermining judicial uniformity. Furthermore, the lack of clear procedural guidelines on how to exercise Khiyarāt has caused confusion in judicial practice (Nowruz, 2016).

For example, Article 308 of Majalla al-Ahkam states that if the Khiyar of option is held solely by the seller, the sold item does not leave the seller's ownership, and in the event of its loss after delivery to the buyer, the buyer is required to pay the market price on the day of loss rather than the agreed price. This provision creates practical difficulties in determining the price of lost goods.

2. Conflict with the Principle of Contractual Bindingness

Another major challenge is the potential conflict between the exercise of Khiyarāt and the fundamental principle of contract bindingness in Afghan civil law. The law presumes contracts to be binding, with Khiyarāt serving as exceptions to this principle. However, varying opinions exist regarding the scope and limits of Khiyarāt, leading to legal uncertainties and hesitation in their enforcement (Rahimi, 2018).

3. Limited Legal Awareness and Public Knowledge

In Afghan society, general legal literacy concerning contractual rights and Khiyar concepts is very limited. Consequently, many individuals fail to properly exercise their rights to rescind contracts or may do so incorrectly. The scarcity of access to qualified legal counsel further exacerbates the problem, resulting in complex disputes and unresolved issues (Zanjani, 2010).

4. Judicial Challenges and Delays in Case Adjudication

The judicial system in Afghanistan often suffers from significant delays, particularly in civil cases involving Khiyarāt, which may require technical and expert examination. These delays complicate dispute resolution processes and contribute to dissatisfaction among the parties involved (Nowruz, 2016).

CONCLUSION

Based on the discussions presented in this article, it can be concluded that the doctrine of contractual options for contract rescission in Afghan civil law constitutes a fundamental pillar in ensuring justice, protecting the will of the parties, and preventing undue harm in contractual relationships. This study, through a detailed examination of relevant statutory provisions and a comparative analysis with the Hanafi jurisprudence, demonstrated that despite the explicit recognition of certain contractual options such as option clause, option of selection, option due to defect, and option of inspection in the Afghan Civil Code, significant practical gaps and ambiguities remain in their application.

Key findings highlight the diversity of views in the jurisprudential sources regarding the number and scope of contractual options (Khiyarat), divergences in their interpretation and application, and the lack of uniform judicial practice and clear procedural guidelines for judges. These factors indicate that although the Afghan legal system benefits from a rich fiqh heritage, the institutionalization and codification of these rules face fundamental challenges.

Moreover, the article underscored that limited public awareness of contractual rights, insufficient legal counseling, and delays in judicial proceedings act as substantial obstacles to the effective and equitable exercise of Khiyarāt. The inherent tension

between the principle of contractual bindingness and the broad application of Khiyarāt may undermine transactional stability unless regulated within a clear and defined legal framework.

In conclusion, it is recommended that legislative reforms be undertaken to clarify and codify the provisions relating to Khiyarāt, coupled with enhanced legal education and the facilitation of the effective implementation of fiqh-based rules adapted to contemporary conditions. Such measures will enhance legal certainty in contracts, prevent numerous disputes, and ultimately benefit not only the contracting parties but also the overall judicial and economic systems of the country.

REFERENCES

- Abdullah, Nizamuddin. (2020). *Nominate Contracts*. Kabul: Saeed Publications.
- Al-Kasani, 'Ala ul-Din Abu Bakr. (1949). *Bada'i' ul-Sana'i' fi Tartib ul-Shara'i'* (Vol. 5). Cairo: Al-Maktabah al-Azhariyyah lil-Turath.
- Al-Marghinani, Burhanuddin. (2004). *Al-Hidayah fi Sharh Bidayatul-Mubtadi* (Vol. 3). Beirut: Daru Ihya' al-Turath al-'Arabi.
- Al-Quduri, Abul-Husayn Ahmad. (1997). *Mukhtasar ul-Quduri fi al-Fiqh ul-Hanafi*. N.p.: Dar al-Kutub al-'Ilmiyyah.
- Al-Sarakhsi, Muhammad bin Ahmad. (1992). *Al-Mabsut* (Vol. 13). Beirut: Dar al-Ma'rifah.
- Al-Sarakhsi, Muhammad bin Ahmad. (1992). *Al-Mabsut* (Vol. 12). Beirut: Dar al-Ma'rifah.
- Ayni, Badr ul-Din. (1199). *Al-Binayah Sharh ul-Hidayah*. Beirut: Dar al-Kutub al-'Ilmiyyah.
- Ibn Manzur, Muhammad bin Mukram. (1993). *Lisan ul-Arab* (Vol. 4). Beirut: Dar Sadir.
- Ibn Qudamah, Abdullah bin Ahmad. (1994). *Al-Mughani*. Beirut: Dar al-Fikr.
- Ibn Rushd, Muhammad bin Ahmad. (1995). *Bidayat ul-Mujtahid wa Nihayat ul-Muqtasid*. Beirut: Dar ul-Fikr.
- Estanikzai, Nasrullah, et al. (2008). *Qamus Istilahat-e Huquqi*. Afghanistan: Project for Legal and Judicial Affairs of Afghanistan.
- Nowruzzi, Muhammad. (2016). *A Study of Contract Law in the Law of Afghanistan*. Kabul: Kabul University.
- Official Gazette. (1976). *Civil Code*. Kabul: Ministry of Justice, Islamic Republic of Afghanistan.
- Rahimi, Sayyed Muhammad. (2018). *Termination of Contracts and Options in the Legal System of Afghanistan*. Kabul: Adalat Publications.
- Zanjani, Hamid. (2010). *Administrative Law*. Tehran: Tehran: University of Tehran Press
- Zhobal, Muhammad Uthman. (1381). *Majallatul-Ahkam al-'Adliyyah*. Kabul: Ministry of justice.