features of intellectual property rights is the ability to transfer, they can be traded like other properties. However, a comparison of intellectual property rights with the conditions and terms of the object of compromise contracts shows that any property whether the original property or its benefits and other financial rights that can be transferred or waived can also be compromised. In fact, it turns out that intellectual property rights, like other properties, can be the object of compromise contracts.

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party's intention and this invalidates the contract rather than ineffective according to the legal system of Iran. However, some scholars have taken the term "ineffectiveness " referred to in Article 200 of the Civil Code at the face value to refer to the contracts that are ineffective and cannot be validated subsequently (Jafari Langroudi, 1999, 262).

3. One of the specific terms related to the compromise on intellectual property rights is that according to Article 47 of the Documents and Real Estates Registration Law approved in 1932, the compromise contract shall be drawn up in the form of a formal instrument. It is worth noting that some scholars believe that this provision applies to cases where the object of compromise is the transfer of real estates (immovable property) (Katouzian, 2000, 326). However, this interpretation is not valid because Article 47 of the mentioned law makes explicit reference to compromise contracts and bounding compromise contracts to the transfer of immovable property does not appear to be reasonable.

Conclusion

Based on our discussions about compromise contracts, it can be concluded: First, compromise contracts are contracts that are not restricted only to resolving conflicts and hostilities, and they can be applied to other transactions as stated by Imamiyyah jurists. Second, compromise is regarded as a binding specific/nominate contract with a wider scope than other specific contracts and its characteristics differentiate it from innominate contracts. In short, compromise contracts are categorized as specific contracts, which have more potential for concluding contracts and agreements than other specific contracts.

The legislator in the civil code has not explicitly referred to compromise on intellectual property rights, and there are no specific requirements and rules in this regard. Given this legal gap and considering the fact that according to Article 167 of the Constitution, in such cases, reference should be made to authentic Islamic sources, a review of jurisprudential sources and jurists' views suggests that this issue has not been explored on a case-by-case basis among the scholars. Given that intellectual property rights are categorized as financial assets, and since one of the important

object of compromise contracts. It is also possible to prove the validity of compromise on intellectual property rights by using the analogy of priority. In other words, if the ownership over the tangible property is essential in sale contracts, intellectual property rights can be sold, as ownership is not a condition for the object of compromise, and thus these rights can be transmitted through compromise to others and such a compromise can be a mutual benefit contract or a bare contract. In the first case, the compromise contract will be governed by conditions and terms of sale contracts and in the latter case, it will be governed by the requirement of donation contracts and thus the conditions and terms of sale and donation contract will not apply to it (Article 758 of the Civil Code).

3.4.1 Special rules of compromise on intellectual property rights

In addition to general conditions of compromise contracts, the compromise on intellectual property rights shall follow special rules which will be detailed as follows:

1. Compromise on intellectual property rights is a binding contract and thus it cannot be canceled unless through options or upon mutual agreement of both parties (Article 760 of the Civil Code).
2. According to Article 762 of the Civil Code, any error in the compromise contract with the compromise party is to invalidate the compromise. The provisions of this article apply to any compromise contract, whether or not the compromise party is the main party to the contract. Besides, errors in the object of compromise are applicable in this regard. However, when it comes to general rules of contracts, the legislator stipulates that mistaking the contract parties to invalidate the contract only when the personality of the party is the main reason for concluding the contract (Article 201 of the Civil Code). Also, the errors in the object of compromise do not absolutely invalidate the transaction and such errors render the transaction ineffective only when they are related to the object of the transaction itself (Article 200 of the Civil Code). Of course, the ineffectiveness stipulated in the mentioned article means the invalidation of the contract with reference to articles 353 and 762 of the Civil Code, as such errors undermine the

the time of concluding compromise contracts. Obviously, not knowing the object of contract does not undermine the validity of the contract provided that it is known ultimately, that is, the object of transfer or waiver can be determined and disambiguated, otherwise something that is totally unknown and even cannot be disambiguated in the future cannot serve as the object of compromise contracts. Accordingly, article 767 states: If after the compromise it turns out that the object of compromise is ambiguous, the compromise is null and void. Also, unawareness can be skipped in cases where it is not due to deception (that is, there is no sinister intention involved). Otherwise, the compromise contract will be invalid if one of the parties has knowledge of its object, but hides it and gives the other party less than what he deserves (Katouzian, 2000, 2: 347).

3.4 Compromise on intellectual property rights and its special rules

Given the definition of compromise contracts and the conditions and terms of the object of such contracts, this section discusses whether it is possible to compromise on the intellectual property rights and transfer them through contracts or not. If the answer is yes, what are its rules and effects?

3.4.1 Compromise on intellectual property rights

After discussing the concept of compromise and the terms of the object of compromise contracts, an issue of interest is to know whether the intellectual property rights can be passed through compromise contracts to other people. In other words, we want to know if intellectual property rights can be the object of compromise contracts.

Given that the intellectual property rights are regarded as financial properties and can be priced, and since one of the important features of the intellectual property rights is the ability to transfer, they can be traded like any other property. However, as it was discussed, any property whether the original property or its benefits and other financial rights that can be transferred or waived can also be compromised. Even some of the jurists believe that financial aspects are not applicable to compromise contracts and legal rights such as retaliation which have no financial aspect but can serve as the object of compromise contracts. Therefore, it turns out that the intellectual property rights can also, like any other property, be the

legislator, transferable rights such as the right of fencing a land with stones and intellectual property rights can only be transferred through a compromise contract because it these rights are not properties from the legislator's point of view.

3.3 The explicitness of the object of compromise

After clarifying the object of compromise, an issue of interest is to investigate whether the object of compromise is to be known? The civil law does not take a clear stance on the object of compromise, but according to the general rules of the contracts, the transaction must not be vague, except in special cases where a tacit knowledge of the object of the transaction is sufficient (Article 216 of the Civil Code). Therefore, it needs to be determined whether compromise contracts are specific in nature so that their object only needs to be tacitly known, or like sale contracts, they are governed by this general rule requiring them to be known.

Solving this problem requires to know whether the specific cases where a tacit knowledge of the object of the transaction is sufficient are defined by the law, or can be inferred from general principles. In the first case, compromise contracts are not regarded as special cases, because, unlike guarantee which requires a tacit knowledge (Article 794 of the Civil Code), there is not such a stipulation for compromise. Therefore, we should try to know if it is possible to gain evidence from other legal sources (except the law) that can categorize compromise as a special case which can be known through a tacit knowledge or not (Katouzian, 2000, 3: 344).

A review of judicial references shows that Imamiyah jurists do not agree on this issue and generally can be divided into two groups:

A group of jurists believes that compromise can be made for transactions with an unknown object in all cases and they do not make a distinction between the cases where the object of compromise is known or not known (Allameh Helli, 1414, 17:16).

Another group of jurists considers an unknown compromise to be valid if it is not possible to determine its attributes during the time of concluding the contract (Al-Hurr al-Amili, 1419, 17:25).

Based on articles 216, 752, 766, and 767 of the Civil Code, it seems that it is not necessary to know the object of compromise at

and the believer's right to be assisted and respected (Naraqi, 1422: 339).

However, some scholars believe that any right can be waived can serve as the object of compromise even if it is not transferable. They make explicit reference to Article 752 of the Civil Code, which does not restrict the object of compromise to transactions, but also generalizes it to non-transactional matters (Abduh, 2001: 389) According to Katouzian also writes that "We should investigate whether the object of compromise can be grouped as a transferable right through compromise, or whether it should be categorized as a nontransferable right. Concerning the first instance, he points to redemption as a right that is not transferable but can be waived. Therefore, it can serve as the object of a compromise contract that results in the waiver of redemption, but it cannot be transferred through a compromise contract (Katouzian, 2000, 3: 342).

Therefore, according to him, a compromise contract whose object cannot be transferred and waived or a compromise contract whose legal action is in conflict with the disputed right and rules related to the public order (such as the right to transfer preemption right, waive guardianship right, or sell or divide endowed properties) is invalid (Katouzian, 2000, 3: 342).

Based on what was mentioned, it becomes clear that the object of the transaction in compromise contracts is of a large scope, and according to articles 752-758 of the Civil Code, there is no limit to compromise contracts. Thus, compromise contracts provide a framework beyond all nominate contracts, which is useful for realizing part of the contractual freedom. Accordingly, it can be concluded that the object of compromise contracts can be placed in into two classes. First, as is the case for other contracts, the object not only can be compromised but can also be traded in other contracts such as the original property and in addition to compromise contracts can serve also the object of contracts such as sale, donation, mortgage, lending, partnership, and testation, or like ownership of the interests can be the object of the lease of objects. Alternatively, the object is merely restricted to compromise contracts such as the right to sue, the right to retaliation, and compensation for damages caused by resolution, option, and redemption and, in most cases, it leads to the waiver of these rights. According to the

1. According to some jurists, the transaction price is no a requirement in compromise contracts. Therefore, the jurists have proposed a general rule based on which anything that can be exchanged for consideration can be regarded as the object of compromise, whether or not it is permissible to sell (Allameh Helli, 1414, 16: 130; Al-Hurr al-Amili, 1419, 17:35).
2. Any right that the can be waived or transferred can serve as the object of compromise. This rule has been proposed by Mulla Muhammad Mahdi Naraqi in his book Mashariq al-Ahkam. In the tenth chapter of the book, he points out that the compromise of the husband's right to return to his wife is not valid in the revocable divorce and proposed this general role that any right that the can be waived or transferred can serve as the object of compromise. He also mentioned the waiver of the claim in favor of the defendant and the waiver of option in favor of one against whom an option is stipulated as examples of compromising the waiver of the right, and the right of fencing a land with stones as an example of the transfer of rights (Naraqi, 1422: 339).

In explaining why the compromise is valid only for the rights that can be transferred or waived, Naraqi has divided the rights into five categories:

1. Non-intermediary financial rights such as the right to own the original property or interests or debts.
2. Intermediary financial rights such as the right of option, preemption right, the right of fencing a land with stones, the right to sue and so on. These rights are not related to the property itself, but they mean the despotic dominion on something that leads to the acquisition of the property.
3. The right to benefit from non-intermediary intangible assets, such as the right to marry, the right to sit in a mosque and other places for someone who enters before others.
4. The right to benefit from intermediary intangible assets such as the right to return to the wife in a divorce.
5. Some privileges that are called "right" and they resemble the rights mentioned in the clause 4 above such as neighbor's

inferred from some articles therein. For instance, Article 215 of the civil code stipulates that a transaction shall have a price and guarantee rational and legitimate benefits. This article is within the second chapter of the civil code entitled “Essential conditions of the transaction validity” and is in effect a general or peremptory norm that shall be observed in financial agreements and contracts. Therefore, the object of compromise shall have a price or value. However, in addition to the mentioned article, Article 754 of the civil code stipulates: “Any compromise contract is binding and valid unless it implies an illegitimate issue”. This article points to the general principle that states any compromise contract shall be regarded as binding unless it is proved invalid. Of course, what should be considered illegitimate is a controversial issue. According to the jurists, any compromise contract that involves allowing unlawful actions or prohibiting lawful actions is illegitimate and void; a rule which is in fact based on a hadith from Imam Baqir (AS), who said:

"A compromise contract between the parties is permissible unless it allows unlawful actions or prohibits lawful actions (Al-Hurr al-Amili, 1419, 18: 443). Legal scholars usually interpret the word "illegitimate" in civil code as the opposition to peremptory norms. Therefore, if we assume that the provisions of Article 215 of the Civil Code concerning the price of compromise contract represent a peremptory norm, any compromise whose object does not have a price/value is to be void. Accordingly, some civil law scholars also reiterated this point and declared that any compromise whose object does not have a price/value or does not entail legitimate rational gains is invalid and void (Emami, 1968, 2: 327). Based on what will be discussed below, it can be suggested that the transaction price is not a condition of the object of compromise.

The question that arises here is whether it is possible to establish a general rule that can be used to identify the object of settlement in compromise contracts. As it was noted, the civil code is silent on this issue. Therefore, according to Article 167 of the Constitution, the cases where the law is silent shall be decided by referring to authentic Islamic sources and fatwas of jurists. Therefore, in order to answer the question posed above, we will examine the views of jurists. A review of the judicial references shows that there are some cases where some jurists have tried to find a general norm. To get familiar with these norms, several cases will be discussed as follows:

Another case that seems not to be valid is legal scholars' reference to Article 10 of the civil code to accept the validity of innominate contracts (Shahidi, 1398: 82). For instance, to substantiate this case, Emami (1968) argues that contract is synonymous with agreement and it is mostly used to refer to specific or nominate contracts, while contract includes all agreements whether nominate or innominate. Accordingly, Article 10 of the civil code stipulates: "A private contract is binding for those who have concluded it provided that it is not explicitly against the law" (Emami, 1968, 1: 159). However, this argument is not valid because as the mentioned article merely underlines the necessity of observing the law and its placement in the introductory part and in the section on "Dissemination, effects, and enforcement of laws in general" can be regarded as a poof in this case. Secondly, there is no difference between the terms agreement and contract. Thirdly, the explicit reference to the term "private contracts" is not helpful for validating the mentioned argument as the term opposing to "private" is "general" not "specific or nominate and there is no reason to assume that the legislator has not used the term "innominate contracts" to shows his intention.

3. Conditions and Terms of the Object of Compromise

As it was mentioned earlier, one of the important divisions of compromise is to divide it into bilateral contracts and bare contracts. The former includes contracts such as sale and lease contracts and an example of the latter is donation contracts. Bilateral contracts, like any other contract, involve two cases: Settlement and object of settlement. The object of settlement is, in fact, the same of consideration in sale contracts. Each of these cases has its own conditions and terms as will be discussed in this paper. The exploration of the conditions and terms of the object of compromise/settlement shows whether the intellectual property rights meet the requirements for the object of settlement so that they can be subject of compromise contracts and be transferred to other parties through such contracts or not. This section addresses the conditions and terms of the object of settlement.

3.2 The Price of Object of Compromise

Although the Civil code has not explicitly referred to the conditions and terms of the object of compromise, they can be

intention and, thus, falls under binding contracts. Therefore, these are two different concepts and, based on what was mentioned, the concept of conditions does not apply to contracts.

2. O you who have believed, fulfill [all] contracts (Surah Al-Ma'idah, 5:1)

One of the controversies among scholars is related to the constraints imposed on contracts. Some jurists limit legitimate contracts to only those that have been mentioned in the Islamic teachings such as sale, lease, contract of farm letting, etc. and consider other contracts as illegitimate contracts. These scholars are modern philosophers and scholars of the late period. For instance, in his book “al-Masālik”, Zayn al-Din al-Juba'i al'Amili known as Tarihi suggested that the contract of planting fruitless trees is illegitimate as barters or exchange contracts require permission from the legislator’s permission and the legislature has not legitimized such contracts (Tarihi, 1416, 5: 71). In contrast, some scholars believe in the non-monopoly of contracts. As an example, the author of Bahuth al-Faqiha suggests: “Indeed, the command of fulfill [all] contracts is not restricted to the existing contracts and thus it applies to anything contracted by the parties, provided that such contracts do not contain unlawful terms such as usury or they are not prohibited by the Islamic legislator (Al-Hilli, 1415: 40).

The term contract has been defined in the first chapter (Contracts and obligations in general) of the second section of the civil code (Contracts, transactions, and requirements). According to Article 183, “A contract refers to a case where one or more persons make themselves committed to one or more persons for an agreed issue”. Therefore, in accordance with this article, any contract that satisfies the essential terms of the transaction's validity as referred to in Article 190 of the civil code will be recognized as a binding and valid contract. One of the most important terms of the validity of the contract is that is must imply the parties’ intention. Accordingly, Article 191 stipulates: “A contract is valid when it is based on the parties’ intention or implies such intention”. The term “specific/nominate contracts” in the third section of the second chapter implies the tacit acceptance of innominate contracts. Therefore, Article 183 does not provide sufficient grounds for accepting innominate contracts.

2.1 Believers adhere to their conditions

Condition refers to requiring a person to do something and the person's obligation to observe it as is the case for sales contracts or other similar contracts (Ibn Manzur, 1414, 7: 329). This definition also applies to conditions stipulated in a contract but it does not relate to primary or even constitutive condition. On the other hand, some scholars have provided other definitions. For instance, the author of Mu'jam Maqāyīs stated that condition refers to a scale or symbol (Ibn Fāris, 1401, 3: 260).

Some believes that the non-binding nature of the primary condition arises from the concept of condition itself and they state that conditions stipulated in a contract are true conditions in every sense of the word as a condition connotes a relationship and does not refer to an independent obligation. However, the definitions of condition proposed by lexicologists are not useful for two reasons: First, lexicologists focus on the morphology of words rather than on their semantics. Besides, even when focusing on meaning, they consider the literal and contextual meanings of the words instead of their real meanings.

The second reason that shows the primary condition is not binding is the consensus among jurists (Bojnourdi, 1419, 3: 253). According to some jurists, even if the hadith "Believers adhere to their conditions" is subject to the primary conditions, its generality is narrowed down by this consensus and there is no doubt in the fact that the primary condition is not binding (Naini, 1994, 2 123). In contrast, the proponents of the binding nature of the primary condition have challenged the existence of a consensus.

In short, it can be suggested that the difference between a contract and the primary condition is related to the parties' intention. For instance, unlike the primary condition, a contract becomes bindings and effective based on the contract parties' intention. Article 191 of civil code states: "A contract becomes binding upon its intention. For instance, a written promise is void as it is not based on an intention and merely shows the performance of an action in the future. To become binding and effective, a written promise, therefore, shall be expressed in the form of a separate binding contract. However, this does not apply to insurance as it has an element of

1. Compromise Contract by Definition

Like many other contracts, compromise contracts represent a class of rational contracts. In other words, such contracts do not have either an originally religious meaning or a religiously extended definition. Therefore, on way to come up with an understanding of the concept of compromise contracts is to refer to lexicologists or common law. According to Raqib Esfahani,, “compromise means agreement and conciliation after hostility and quarrel” (Raqib Esfahani, 1429: 214). In explaining the prophetic hadiths, Fakhr al-Din al-Turayhi believes that “Muslims are permitted to make compromise unless it turns a prohibited action into a permitted action or vice versa”. He also suggests that the conflicting parties reach an agreement through compromise as it is a contract that has been religiously envisaged to stop conflicts and disputes. Compromise has been defined in the Moin Encyclopedic Dictionary as reconciliation and settlement.

There is no definition for compromise in the civil code and it has addressed different types of compromise in Article 752. The reason for the lack of a definition by the legislator, according to Jafari Langroudi, is that “the drafter of the civil code has often followed jurisprudence texts where there is no exact definition of the object of compromise or settlement. Also, there are lots of controversies among the scholars themselves concerning compromise contracts and the drafter of the first Vol. of the Civil code has personally avoided providing a definition of the term” (Jafari Langroudi, 2010, 134).

2. Reasons for the definite nature of contracts

It has been acknowledged that the legislator, contrary to what many lawyers have said, has not recognized the original compromise. However, he does not oppose the principle of freedom of contract, since it can be seen in the provisions some of the enacted articles. Therefore, it is necessary to provide a more detailed about the nature of certain articles such as Articles 10 and 183 to determine their differences from compromise agreements and also to consider whether these articles have been adapted from French law or like other provisions of the law they have been borrowed from principles of jurisprudence.

الملخص:-

عقد الصلح بمفهومها الواسع في الفقه الإمامية والقانون المدني لها شكل واسع يتجلى في سيادة الإرادة في معظم الأفعال القانونية. لقد جاء الصلح بمعني التسالم والتصالح، وهذا هو جوهر الفرق بين عقد الصلح وجميع الإجراءات القانونية التي تقف الصلح في مكانها.

الصلح في الفقه الإمامية خلافا لآراء معظم الفقهاء السنة لا يكرس لإزالة الخصومات والصراعات فقط، كما أنه مسموح به في مواضع أخرى. الصلح هو عقد واجب لا غنى عنه والذي هو في حد ذاته عقد محدد يكون مفهوم أوسع من العقود المحددة الأخرى. ملكية الوقت، عقد الاستنصاع، نقل ملكية الأسهم، السندات الوقفية، كوبونات الإيجار، نقل الحقوق الناشئة عن العقود الفكرية وعقود الامتياز، هذه كلها من العقود المستحدثة ولا توجد في أي من العقود المحددة. يعتقد بعض الفقهاء أنه يجب قبول هذه العقود ضمن دائرة عقد الصلح، ويعتقد بعض المحامين أنه بسبب وجود المادة ١٠ من القانون المدني، فإنه ليس من الضروري استخدام عقد الصلح للتحقق من صحة هذه العقود.

الكلمات المفتاحية: عقد الصلح، التحليل الفقهي والقانوني، القانون المدني.

Abstract:-

A compromise contract as a broad concept in the Imamiyyah jurisprudence and our civil code is considered a very general term that manifests the rule of will in most legal actions. Compromise literally means concession and conciliation, and compromise in this sense differentiates the compromise contract from all the legal actions serving a basis for compromise. Although most Sunni jurisprudents and scholars often associate compromise only with disputes and dispute resolution, according to the Imamiyyah jurisprudence, there is no need for a history or background of dispute for the realization of compromise, and our civil code has rightfully followed this perspective, and Article 752 of the Civil Code reflects the same view. This paper addresses the payment of consideration, often a negotiated financial sum, in exchange for intellectual property and compromise contracts in order to clarify whether the legal nature of such a payment can be described and analyzed in the form of a compromise contract. To this end, first, the concept of compromise is discussed followed by a discussion of the conditions and terms prevailing compromise contracts in order to determine the scope of such contracts. Finally, considering the nature of intellectual property rights, we investigate whether the payment of consideration for intellectual property can be described and analyzed in the form of a compromise contract. It is worth mentioning that compromise can be divided into various categories in terms of different aspects. For instance, compromise contracts, depending on the existence or absence of consideration, are divided into bilateral contracts and bare contracts. As a case in point, the legislator in Article 757 of the Civil Code refers to bare contracts. This suggests that bare/gratuitous contracts represent a legal concept in Iran's law. Nevertheless, the focus of the present study is on bilateral contracts.

Keywords:- Intellectual Property, Compromise Contracts, Civil Code

A Judicial and Legal Study of Compromise on Intellectual Property Rights

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التحليل الفقهي والقانوني لبعض النماذج من العقود المستحدثة في شكل عقد الصلح

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