

# Expiration of Commitment in Islamic Jurisprudence and the Civil Law of Afghanistan

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## ABSTRACT

Commitment in jurisprudence is a legal relationship between two persons, by virtue of which the liability of one is engaged in favor of the other. The legal system of Afghanistan, in Article 488 of its Civil Code, defines commitment as follows: "A personal right or obligation is a relationship between the creditor's and the debtor's conscience, by virtue of which the creditor can demand from the debtor the granting of a thing, the performance of an act or the abstention from it." The expiration of commitment is one of the major and specialized topics in the jurisprudence and civil law of Afghanistan. Commitment in jurisprudence is extinguished through fulfillment of the covenant, release, rescission or dismissal, impossibility of enforcing the commitment, unity of obligation, expiration of the term of commitment, set-off, assignment, death of the obligor and loss of capacity, and in the legal system of Afghanistan, it is extinguished through fulfillment of the commitment, and through equivalents of fulfillment of the commitment such as payment in lieu, transformation of the commitment, representation, execution, and unity of obligation, and other than through fulfillment, release, impossibility of enforcing the commitment and prescription. This research has been conducted with the aim of understanding and recognizing the expiration of commitment in jurisprudence and the Civil Code of Afghanistan. This research is applied in terms of purpose and descriptive-analytical in nature, and the data of this research has been analyzed qualitatively. The findings of this research have shown that there is a correspondence between commitment in jurisprudence and the Civil Code of Afghanistan. The findings of this research can be useful for judges, defense lawyers, and professors of law and political science at universities in Afghanistan.

**Keywords-** Release, Unity of Obligation, Commitment, Fulfillment of the Covenant, Execution, and Prescription.

## I. INTRODUCTION

In jurisprudence, an obligation is a legal relationship between two persons, by virtue of which the liability of one person is engaged in favor of the other. Jurists believe that an obligation is a legal relationship by virtue of which one or more specific persons, by the requirement of a contract or quasi-contract, or a tort or quasi-tort, or by the command of law, are obligated to give something or are bound to perform or refrain from a specific act for the benefit of one or more specific

persons. Regarding the termination of obligations in Islamic jurisprudence (fiqh) and the Civil Code of Afghanistan, no independent and separate research has been conducted. The termination of obligations in Islamic jurisprudence and the Civil Code of Afghanistan occurs through fulfillment of the obligation, release, rescission or dismissal, impossibility of performance, consolidation of the debt, expiration of the obligation period, set-off, delegation, death of the obligor and loss of capacity. In the Civil Code of Afghanistan, obligations terminate through fulfillment of the

obligation, and through equivalent means of fulfillment such as payment in lieu, substitution of the obligation, representation, assignment, and consolidation of the debt. Obligations also terminate in ways other than fulfillment, such as release, impossibility of performance, and prescription. Given that the understanding of professors and students regarding the modes of termination of obligations in the jurisprudence and Civil Code of our country has been shrouded in ambiguity, the researcher has set out to identify and elucidate the termination of obligations in Islamic jurisprudence and the Civil Code of Afghanistan.

Given the ambiguity surrounding the understanding of professors and students regarding the expiration of obligations in the jurisprudence (Fiqh) and the civil law of our country, the researcher has set out to identify and understand the expiration of obligations in the jurisprudence and the civil law of Afghanistan. This research has been conducted with the aim of comprehending and recognizing the expiration of obligations in the jurisprudence and the civil law of Afghanistan. From the perspective of purpose, this research is applied, and in terms of nature, it is descriptive-analytical. The data has been analyzed by using a qualitative method. The findings of this research indicate that there is a relative correspondence between the expiration of obligations in the jurisprudence and the civil law of Afghanistan. This research can be beneficial for judges, defense lawyers, and professors of law and political science at universities in Afghanistan. The structure of this research is based on issues such as the concept of obligation, the expiration of obligations in jurisprudence, the expiration of obligations in the civil law of Afghanistan, and the conclusion.

## II. CONCEPTUALIZATION OF EXPIRATION OF OBLIGATION IN ISLAMIC JURISPRUDENCE AND THE CIVIL CODE OF AFGHANISTAN

The expiration of obligation in Islamic jurisprudence and the Civil Code of Afghanistan refers to the factors and causes that, upon their fulfillment, the obligation of the parties or one of them is extinguished, which are discussed below.

### *Expiration of Obligation in Islamic Jurisprudence*

**Fulfilling Commitments:** The obligation is extinguished through fulfillment of the commitment and its execution; if the obligation is the delivery of a specific item or debt, its extinction occurs with the delivery of the sold item to the buyer and the price to the seller, etc. (Collective of Authors, 1427, p. 172). If the obligation is the payment of money, the fulfillment is achieved by payment and discharge of the debt. If the subject of the obligation is the delivery of a specific item, the fulfillment is realized by delivering it.

Regarding fulfillment of commitments, it is necessary that both parties to the obligation have the capacity and own what they are fulfilling. If the subject of the obligation is property, the parties to the obligation can, through fulfillment of the commitment, agree on matters related to that property, such as an animal or a commodity (Collective of Authors, 1386, p. 270).

**Discharge:** Discharge in the lexical sense, means purification, cleansing, distancing from something, and the discharge of debt and the relinquishment of a right on one's liability. Discharge is when the creditor or the lender forgoes the debts and rights they have over the debtor or the obligor. Discharge is valid with any expression that indicates a discharge, such as the words, "I have discharged", and "I have exempted." The Hanafi jurists consider Discharge valid in cases where the discharge is not accepted, such as real estate like land, houses, vehicles, and apartments, because in their view, Discharge is a discharge, and the ownership of these physical entities does not accept a discharge. In other words, Discharge is when a person forgoes a right they have over another, or a debt that they have over another, in favor of the obligor. If a reconciliation through Discharge is based on the discharge of the entire right (debt) or a part of it, this forgiveness through Discharge is considered valid for the entire right (debt) or a part of it. Another example is when the parties have mutual debts over each other; each party can, through Discharge, discharge the other party's liability from the debt. (A compilation of authors, 1327, p. 137). (A compilation of authors, 1427, p. 150).

**Termination or Dismissal:** One of the other factors in the expiration of an obligation is the termination or dismissal in permissible contracts such as agency, partnership, loan, deposit, loan for use, etc., unless the termination causes harm to another party. In this regard, Al-Suyuti states: "Partnership, loan for use, deposit, loan... and all of these are terminated or dismissed by the contracting parties or one of them." Whenever the termination of permissible contracts results in harm to another party, such as the termination of agency or loan for use..., the termination should be prevented, and in this case, the permissible contracts are transformed into binding contracts (A collection of authors, 1427, p. 163). The breach of an obligation is either through judicial termination, which occurs due to the effect of a claim and demand by the obligation from the judicial system, or through consensual termination, which is based on the agreement of the parties, in the event of non-performance, the obligation is terminated. Therefore, termination or dismissal leads to the breach of obligations in the field of obligations (Rahimi, 1398, p. 238).

**Impossibility of enforcing a commitment:** The condition in the subject of a commitment is that its enforcement should not be impossible or impracticable, because the purpose of a commitment is its enforcement; since something that is impossible, its enforcement

becomes impracticable. The impossibility of enforcing a commitment or its intellectual impossibility is like the destruction or termination of the place or subject of the commitment, which, with its destruction, the commitment is terminated. Or the impossibility of enforcing a commitment is a practical impossibility, for example, Ahmad rents a house for a period of one year, but before the end of the rental period, its roof collapses due to an earthquake and other external causes. In this case, the rental for the remaining period of the rental, which is the same six months, is unenforceable and can be rescinded (A collection of authors, 1431, p. 271).

**Unification of Liability:** In the unification of liability, the debtor is placed instead of the creditor for all or part of the debts. For example, if the deceased (the predecessor) owes one thousand Afghanis from his heir, and the deceased has no other heir, then the debt is transferred to the heir after the death of the predecessor, and the heir takes the place of the predecessor in the payment of the debt, and in this case, the obligation with respect to the debt is waived. Because a person has no obligation to himself. And if the predecessor had more creditors, for example, if the predecessor had three sons after his death, and he had three thousand Afghanis of debt on them, and they inherit the mentioned amount, it is obvious that these three thousand Afghanis are transferred to each of the heirs in proportion to their share of inheritance. Therefore, one thousand Afghanis will go to each of the mentioned heirs, and the obligation is waived through the unification of liability.

If the predecessor is indebted to his heir, the estate after the death of the predecessor is burdened with this debt as the right of the creditor heir. And if we look at the famous opinion of the Hanafi school of thought, inheritance does not exist except after the payment of debts and the existence of debt, which is an obstacle to the estate and its transfer to the heir. And if the heir is the creditor, in this case the liability of the creditor and the debtor is united, because the debt remains on the estate and the liability of the debtor until it is paid. Therefore, after the death of the predecessor, the unification of liability occurs, and the heir takes his debt from the estate of the deceased, and the obligation is waived (a collection of authors, 1431, p. 244).

**Expiration of the Commitment Period:** The expiration of the commitment period is realized when the commitment is temporary, such as a lease. In this case, the commitment of both parties expires upon the lapse of the period. For example, when a person temporarily guarantees another person's debt for a period of two months from the time of the contract, the guarantor's commitment will be extinguished upon the expiration of this period, and thereafter it is not permissible to demand the debt from the guarantor. This rule is valid for all temporary commitments, such as reward contract, crop-sharing, (orchard management partnership profit-sharing loan for use and deposit. The commitments in these

contracts are extinguished upon the termination of their respective periods.

**Compensation:** Compensation refers to the rejection and cancellation of two equal and identical debts for two persons, each of whom is indebted to the other. Compensation in jurisprudence is a suitable method for the payment of debt for the parties, by virtue of which the two debts are extinguished. The essence of compensation is that each of the parties is simultaneously the creditor and the debtor of the other based on the two debts they have over each other, and the two debts cancel each other out through compensation, which is one of the reasons for the termination of the obligation.

Compensation in jurisprudence is an appropriate method in the administration of religion for both parties, by virtue of which two debts are extinguished. The essence of the concept of Compensation is that each of the parties is simultaneously a creditor and a debtor to the other based on the two debts they have against each other. And the two debts cancel each other out through Compensation, which is one of the causes of the extinction of the obligation. In this regard, the right of Compensation is clear for each of the parties. In Compensation, it is a condition that the two debts be cash or fungible, and they must be equal in amount, attribute, type, and quality. In this case, the two debts are extinguished algebraically without the demand of either party. And if the two debts are equal in amount, they are extinguished by Compensation, and if there is a difference in their amount, the minimum debt is extinguished from the maximum, and the remainder remains in the liability of the debtor. The extinguishment of two debts through Compensation is considered permissible in the Maliki, Shafi'i, and Hanbali schools of jurisprudence.

The Hanafis say that the effect of Compensation (mutual settlement or set-off) leads to the fall of the claim for debt, but it does not have any effect on the fall of the essence of the debt itself, because despite Al- Compensation, the debt remains on the liability of the parties, and there is no reason for the dissolution and fall of the debt through Compensation. And the establishment of the right for the debtor does not mean the clearance of his liability from what is established on his liability for his creditor. Therefore, Al- Compensation, from the perspective of Islamic jurisprudence, is one of the causes of the expiration of the obligation (A Collection of Authors, p 1431, 273).

Remittance: remittance, in the lexical sense, means to convey or transfer. Islamic jurists have provided several definitions regarding the definition of transfer, which include:

The transfer of a claim from the liability of the debtor to the liability of the obligor. The Majallat al-Ahkam in its Article 673 defines transfer as follows: "Transfer is the transfer of a debt from one liability to another liability." The non-Hanafi jurists describe the

transfer as follows: is a contract by which a debt is transferred from one person's liability to another's transfer has two types:

**Transfer of Debt:** transfer of Debt refers to a transaction where the subject matter is a debt. It is an agreement between the debtor and a third party, where the third party accepts the debt on behalf of the creditor. Regarding the effects of transfer of Debt, the majority of jurists say that the assignor is absolved of liability. However, Hasan al-Basri believes that the assignor is only absolved through a discharge. Imam Zufar says that the assignor is not absolved even through a discharge. Among these opinions, the view of the majority of jurists is the most valid.

**transfer of Right:** transfer of Right refers to a transaction where the creditor agrees with a third party that the right the creditor has against the debtor be accepted by the third party. In this case, the third party replaces the creditor, and the right is transferred to the third party along with all its attributes and characteristics. The Shari'a effect of this transfer is that the right, along with its accessories like guarantee, priority right, exclusive right, and mortgage, is transferred to the assignee. This is because, as a result of transfer, the debt or the right is absolved from the assignor. Therefore, the obligation is extinguishable as a result of transfer and is legally extinguished.

**Death:** Death is considered one of the causes of the termination of an obligation in Islamic jurisprudence. The rulings on obligations, given their multiplicity, contain various forms and aspects. The number of obligations that are terminated by death is subject to being waived, while the number of other obligations is not terminated by death. Obligatory commitments are divided into four categories. According to the Hanafi school of thought, in some obligations the meaning of worship is predominant, such as zakat, obligatory charity at the end of Ramadan, expiations, compensation for breaking a fast, pilgrimage (hajj), and the penalty for hunting during the state of ritual consecration. All the aforementioned cases are terminated from the obligation of the deceased person due to their death.

This text discusses various types of obligations that are considered to be acts of goodness and maintaining family ties, such as providing financial support to those who are entitled to it. This type of obligation is nullified upon the death of the person responsible, as the deceased can no longer intend to fulfill the duty of maintaining family ties.

Some other obligations are tied to specific actions, such as apostasy, which carries a penalty of a poll tax. These obligations are nullified upon the death of the person responsible, as the apostate is no longer considered eligible after their death, and no poll tax can be extracted from their estate.

However, there are other obligations related to financial matters, such as the tithe land tax and other taxes, which are determined by the interests of the

Islamic ruler for the benefit of the subjects. Due to the predominant nature of obligation in these cases, they are not nullified upon the death of the person responsible. Similarly, obligations that arise from the lack of legal capacity in non-binding contracts, such as insanity and death, can be nullified. (Adapted from a collection of authors, 1437 AH, p. 274).

### III. EXPIRATION OF OBLIGATION IN THE CIVIL LAW OF AFGHANISTAN

A personal right or obligation is subject to expiry, unlike a real right. Expiry or extinction means the termination of an obligation, and it refers to the termination of obligations that are incumbent upon a person. In an obligation, a legal relationship is established, and in the extinction of obligations, that relationship is eliminated and disappears. The causes of the expiration of an obligation, in accordance with Article 897 of the Civil Law of Afghanistan, are as follows: "Payment of debt in cash, by assignment, release, transfer, and renewal." According to the text of this article, the causes of payment of debt (payment) are the realizations of fulfillment. Based on the above article, assignment, release, renewal, and transfer are considered as the causes of the expiration of debt. The legislator of the Civil Law of Afghanistan has divided the causes of the expiration of obligations into eight parts, which are: payment of debt, payment of debt in lieu or counter-performance, renewal and representation, assignment or set-off, unification of the debt, release, impossibility of execution, and prescription. The causes of the expiration of obligations are detailed below.

**Fulfillment of Commitment:** Fulfillment is derived from the root which in the lexicon means to fulfill one's obligation (Amid, 1383, p. 1123). In terminology, fulfillment of a commitment means the transfer of an object, the performance of an act, or the abstention from an act by the debtor or their representative, as a result of which the creditor achieves their goal and the commitment is extinguished (Khaje Piri, 1385, p. 295). Fulfillment of a commitment refers to the act by which the obligor performs what they have undertaken in the contract. Fulfillment of a commitment includes payment of money, delivery of property, performance or abstention from performing an act, and transfer of ownership (Katouzian, 1385, p. 5). The legal system of Afghanistan, in Article 898 of its Civil Code, states: (1. The debt can be paid by the debtor or his representative or a person for whom the payment of the debt is in his interest, considering the provisions of Article 819 of this Law). The explanation of the first paragraph of this article is that if Mahmood owes 100,000 Afghanis to Ahmad, he can pay it himself or through his legal representative, or the debtor can transfer the same debt to the assignee, and the assignee can receive it from the assignor, provided that such payment of the debt is in the

interest. The second paragraph of the same article is as follows: (Similarly, with regard to the above paragraph, the payment of the debt by a third party for whom the payment of the debt is not in his interest is valid, provided that the creditor can refuse the payment of the debt by the third party in case of objection by the debtor and notification of this objection to the debtor). Meaning that if the payment of the debt by a third party is not in the interest of the creditor and there is a fear of non-payment of the debt, the creditor can, after objecting and notifying the debt and objection to the debtor, refuse the payment of the debt by the third party and demand it from the debtor (Samangani, 1397, pp. 241-250).

#### IV. EXTINGUISHMENT OF OBLIGATION THROUGH EQUIVALENT PERFORMANCE

The commitment can be discharged through what is equivalent to fulfillment, which includes renewal and substitution (payment in return), clearing (compensation), and union of liability, which are discussed below.

**In lieu of:** The parties to an obligation can agree that another asset or thing be paid in place of the object of the obligation. For example, a creditor and debtor can, by agreement, accept that the debtor pays the creditor gold or a car instead of cash, and the debtor's obligation is thereby extinguished. Payment in lieu of is considered a type of performance, as the debtor discharges the debt by transferring another asset, and the creditor accepts this in satisfaction of the debt. If the original obligation was for a sum of money, and it is agreed that goods will be paid instead, this legal act is in fact akin to a sale (Abdullah, 1396, 471). The laws of some countries, including Afghanistan, have accepted this matter. Our legal system in Article 1926 of the Civil Code states the following: "If the creditor accepts something other than what is owed, the mentioned exchange is considered a substitute for payment." The explanation of this article is as follows: If the debt is 100,000 Afghan Afghani in cash, and the creditor accepts 1,000 seers (a unit of weight) of wheat instead, this exchange is considered a substitute for payment.

Furthermore, Article 927 of our country's Civil Code regarding payment in lieu states: "If the payment of a debt is made by transferring the ownership of an item that was given in lieu of the debt, the rules of sale, particularly those related to the competence of the contracting parties, warranty of title, and hidden defects, shall be observed. And with regard to the payment of the debt, the rules of payment, especially those related to the determination of the type of payment and the extinguishment of securities, shall be observed."

Ahmad is indebted to Mahmud for an amount of five hundred thousand Afghanis, and in the meantime, he has also mortgaged two a unit of land measurement of his own land through formal mortgage. Both parties have

full legal and Sharia-compliant capacity. The mentioned debtor transfers the ownership of a residential property belonging to him to the creditor through an absolute deed of sale, and the debtor is registered as the buyer in this deed. In this case, the rules of sale, such as the guarantee of entitlement, where a third party claims the sold property, apply. The creditor also has the right of recourse regarding the mentioned amount. If there is a hidden defect in the sold property, the creditor can rescind the sale contract and reclaim the price from the debtor, or the debt remains unpaid as before. Moreover, the rules of debt repayment, which result in the elimination of collaterals and the formal mortgage of two a unit of land measurement of land, are established. The formal mortgage is rescinded based on the receipt of the legal document, and the mortgaged property is returned to its previous state (Samangani, 1395, p. 265). The legal effect of payment in lieu is the discharge of the debtor's obligation, as this payment in lieu is considered a substitute for the debt and a means of extinguishing the obligation (debt) (Abdullah, 1396, p. 472).

**Novation (Transformation of Obligation):** The legal system of Afghanistan, with a civil law approach, considers novation or transformation of obligation as one of the factors for the extinguishment of obligations. Novation or transformation of obligation means that through it, the original obligation is extinguished and a new obligation is substituted in its place. With the novation of the obligation, the old debt is extinguished and a new debt is created. In the definition of novation or transformation of obligation, it is stated: Novation or transformation of obligation refers to the substitution of a new obligation in place of the previous one (Ansari and Taheri, 1384, p. 617). Article 928 of our country's Civil Code considers the renewal and conversion of an obligation as permissible, and declares: "The renewal of a debt is permissible based on a new contract that differs from the original obligation in terms of the subject matter, cause, or change in one of the parties." In the renewal or conversion of an obligation, the condition is that the previous obligation must exist in order for the new obligation to be created. Article 932 of the Civil Code states in this regard: "1. Renewal of a debt is valid only when the previous and new debts are free from causes of nullity; 2. If the previous debt arises from a contract that is found to be voidable, its renewal is not permissible, unless the renewal is for the purpose of ratifying the contract and substituting it for the previous contract."

The explanation of both paragraphs of this article is as follows; If someone rents out a room in their house for the purpose of carrying out acts that go against public order and decency, such as gambling, dancing, and music that violates religious law, this lease contract is void due to the existence of grounds for invalidation, and the renewal of it regarding the invalidity of the reason is considered null and void. And if the previous debt is the result of a contract that is deemed voidable,

its renewal is not permissible. And this lease contract is void due to the illegal acts, and its renewal is not permissible. However, if a new and valid lease contract is concluded between the parties to replace the previous invalid lease contract, through renewal or substitution of the obligation, in this case, the renewal of the previous debt to the new debt is considered permissible (Samangani, 1395, pp. 268-269).

**Subrogation:** What is subrogation in the conversion of obligation? To clarify subrogation in obligation, the following example can be provided: Ahmad owes Mohammad 100,000 Afghanis, and Ahmad assigns the debt repayment to Masood, and Masood accepts it and then pays it off, and the creditor Mohammad also accepts this change of debtor, this renewal of debt is the concept of change of debtor. This renewal of debt is not possible in an approximate manner and without the consent of the creditor. However, the new obligation of the non-assigned person has the status of surety, in which case the new obligation arises alongside the old obligation. If the new obligated person pays the debt on behalf of the debtor, and the creditor accepts and receives it, in this case the debt is discharged from the debtor. Article 934 of the Civil Code of our country in this regard states: "Subrogation in the contract is valid when the creditor accepts the obligation of a third party to pay the debt instead, this is recognized as the renewal of debt by changing the debtor." Similarly, Article 934 of the Civil Code of our country regarding subrogation in the conversion of obligation states: "Subrogation in debt is valid when the creditor accepts the obligation of a third party to pay the debt instead of the debtor, this is recognized as the renewal of debt by changing the debtor. Renewal of debt in subrogation is not valid as a loan. If there is no agreement for the renewal, the new obligation arises alongside the old obligation."

**Setoff:** In jurisprudence and law, setoff is referred to as 'Tahaator' and 'Moghasa', and it is one of the causes of debt fulfillment and consequently the extinction of obligations. The regulations regarding it are stipulated in Articles 936 to 946 of the Civil Code of our country. In legal and jurisprudential terminology, setoff is the extinction of a debt owed to the creditor by the debtor in exchange for what the debtor owes to the creditor. The legal system of Afghanistan has defined setoff in Article 936 as "Setoff is the extinction of a debt where two persons mutually have claims against each other." Through setoff, the parties can simply discharge their mutual debts (Abdullah, 1396, p. 480).

Abdullah from the commercial transaction area has a claim of one hundred thousand Afghani against Abdul Rahman, and in return, Abdul Rahman has a claim of one hundred thousand Afghani against Abdullah from the rent of a one-room house. The parties agree that the mentioned debts shall be set off mutually, and thereby, the said debts are extinguished from the liability of the parties and they are discharged (Samangani, 1395, p. 270). The set-off or compensation

is either legal, which is done by the command of the law, or voluntary, which is done with the consent of the parties. In this regard, the Civil Law of Afghanistan in Article 937 stipulates: "The set-off is either legal, which is done by the command of the law, or voluntary, which is done with the consent of the parties."

**Unification of Liability:** Whenever the attributes of creditor and debtor are combined in a single person, resulting in the extinguishment of the debt, it is referred to as the Unification of Liability. The best example of Unification of Liability can be found in the case of an heir being a debtor to the deceased, and the deceased being a debtor to the heir, both of which lead to the extinguishment of the debt.

For example, if a son is indebted to his father, and the father passes away, and the sole heir is this one son, and the entirety of the deceased's estate is towards this debt owed by the son, this debt passes on to the son and the debt is extinguished. The second example regarding a will is as follows: for example, a creditor bequeaths his debt to the debtor, the liability of the creditor and the debtor becomes one after the creditor's death, because after the death of the testator and the acceptance by the legatee, the legatee becomes the creditor and the debt is extinguished (Abdullah, 1396, p. 488).

The third example is that of three people, Abdullah, Abdul Karim, and Muhammadullah, who are working together in a business transaction in a joint company. These three individuals owe 900,000 Afghan Afghanis to Abdul Rahman. Before the debt is paid, Abdul Rahman passes away, and only one heir, Abdullah, remains. In this single debt of 900,000 Afghan Afghanis owed to the deceased Abdul Rahman, the heir, Abdullah, assumes the dual role of creditor and debtor. The mentioned debt is extinguished to the extent of the unity of liability that occurred in this case. This means that an amount of 300,000 Afghanis, corresponding to the unity of liability of Abdullah, is extinguished. The remaining 600,000 Afghanis are to be paid by Abdul Karim and Muhammad Allah, who were the debtors of the deceased Abdul Rahman, to his heir, Abdullah, and his successor (Semangani, 1395, p. 277). The difference between delegation and unity of liability is that in unity of liability, there is only one debt, while in delegation, there are two debts. In delegation, the parties are two individuals, whereas in unity of liability, the two qualities of creditor and debtor are combined in one person (Al-Sanhuri, 2002, p. 9578).

## V. EXPIRATION OF COMMITMENT OTHER THAN BY FULFILLMENT

Expiration of an obligation can occur through means other than performance, and includes release, impossibility of enforcement, and prescription. Discharge of the debtor's obligation through means other than performance, without the creditor receiving the debt

or its equivalent, is achieved (Al-Sanhuri, 2002, p. 958). We will address each of these separately below.

**Relinquishment of a debt:** in the lexical sense means; to heal and be free from religion and to relinquish a right to another. In the terminology, it means to relinquish one's own right or debt to another. In Abra', it is a condition that the Ibera' (the one who performs Abra') must have the competence to make a gratuitous act, meaning that the Ibera' must be sane, mature and discerning. In this regard, Article 952 of the Civil Code states as follows:

"For the validity of the waiver of the capacity to donate, the waiver is the responsibility of the donor. The waiver cancels a right, and they must have authority over it; that is, they must be the owner of it or the representative of the owner, such as an agent or an executor. And if there are multiple debtors, each of them must be fully identified. Article 957 of our country's Civil Code in this regard states: "If there are multiple debtors, the complete identification of each of them is necessary in the waiver." In our country's legal system, the acceptance of the debtor is not considered a condition for the waiver, but if the debtor rejects it, the waiver is canceled. Article 953 of the Civil Code in this regard states: "The waiver is not conditional on the acceptance of the debtor, except that it is rejected by the rejection of the debtor, and if the debtor dies before accepting the waiver, the debt is not taken from the estate. Moreover, the subject of the waiver should not be of the category of real estate. For example, if someone usurps someone else's land, building, shop, and book, and then waives it, it is not valid. Because the waiver is an annulment, and the annulment of a real estate, which is essentially the annulment of ownership, is invalid. And Article 956 of our country's Civil Code, regarding this issue, states: "A right that does not accept annulment cannot be waived." In the event that the subject of the waiver is a debt or rights, such as the waiver of the right to sue and the like, this waiver is valid. Another condition of the waiver is that the absolved (the debtor or the person whose rights are waived) must exist at the time of the waiver. Because the waiver is an annulment, and if there is no right or debt, it cannot be annulled. Article 958 of our Civil Code in this regard states: "The waiver is made of rights that are established before the waiver, and does not include a debt whose necessity is realized after the waiver, even if the cause of the debt existed before the waiver.

Remission or discharge of debt on the condition of paying a part of the debt is also considered a form of remission. For example, if the creditor says to the debtor, "I remit half or a third of the debt you owe me, if you pay the remaining part," this remission is considered valid. Article 955 of our country's Civil Code states the following on this matter: If the creditor remits a part of the debt on the condition that the debtor pays the remaining part by a specified time, the debtor is absolved of liability if the condition is fulfilled;

otherwise, the entire debt remains enforceable against him. The suspension of remission on a condition is valid, because remission means the relinquishment of a right.

For example, if Abdullah claims ownership of a plot of land against Abdul Karim and remits this claim on the condition that the latter pays him 100,000 Afghanis in cash, this remission signifies the transfer of the land plot in exchange for 100,000 Afghanis, and the suspension of this remission on the mentioned condition is considered valid. Article 954 of our country's Civil Code states the following on this matter: "Remission signifies the transfer of ownership, and the suspension of remission on a condition is valid.

**Impossibility of Enforcement of Obligation:** The impossibility of enforcing an obligation is also considered one of the ways an obligation expires. The legal system of Afghanistan clearly states this issue in Articles 960 to 964 of its Civil Code. Article 960 regarding the impossibility of enforcing an obligation state: "If the debtor proves that fulfillment of the obligation has become impossible for reasons beyond his will, the obligation shall be extinguished. For example, Ahmad had contracted with Mahmoud, a famous painter in the country, to paint a picture for him in exchange for one hundred thousand Afghanis. However, due to unforeseen events, Mahmoud loses the fingers of his hand, as a result of which he loses the ability to paint. In this case, Mahmoud's obligation to paint the picture is extinguished. The effect of this is that if the enforcement of an obligation becomes impossible due to an external factor, the obligation, along with its accessories, such as personal and real guarantees like mortgage, privilege, exclusivity, and surety, and the like, shall expire, and the debtor's liability shall be dismissed.

The legal system of our country regarding this matter is expressed in Article 961 of the Civil Code as follows: "If an object comes into the possession of a non-owner by virtue of a contract or without it, and the said object is destroyed without trespass and negligence on the part of this person, in case the possession is with guarantee, its compensation shall be incumbent upon the possessor, and if the possession is in the nature of a trust, there shall be no compensation. For example, Ahmad deposits five pieces of his carpets with Mahmoud for safekeeping as a deposit, and these carpets are destroyed without Mahmoud's trespass and interference. In this case, this deposit property does not have any compensation. And if these carpets are usurped by Mahmoud without right, and his possession is a possession with guarantee, then even though these carpets are destroyed without negligence in the possession of the usurper, compensation shall be incumbent upon him (Samangani, 1395, p. 283).

**Time prescription:** Time prescription consists of two words, "review" meaning passage, passing, going, and crossing, and "time" meaning time, era, period, hour, and occasion. Time prescription is discussed in Islamic jurisprudence under the title of "taqadum" (Ansari and

Taheri (1384, p. 1786). Time prescription is the lapse of a period of time after which, by virtue of the law, a claim is no longer heard (Jafar Langarudi: 1399, p. 667).

Time limitation refers to the lapse of the legal period set for a right, after which the right becomes extinguished and the claim on it is no longer admissible, or in other words, the intention of limitation (prescription) (Stanezkai: 1396, p. 63). In another statement, whenever a right is not claimed without an excuse within the period specified by law, it results in the extinction of the claim (Stanezkai: 1397, p. 47). Time limitation consists of three types: time limitation for acquiring a right, time limitation for extinguishing a right, and time limitation for extinguishing the right to file a claim, which are discussed below. According to Article 2285 of the Afghan Civil Code, the time limitation for acquiring rights in real estate such as apartments, shops, etc. is fifteen years. The right of usufruct, the right of easement, and the right of emphyteusis are also fifteen years according to Articles 2316, 1027, and 2337 respectively. Time limitation for extinguishing the right to file a claim: The time limitation for extinguishing the right to file a claim is when a person has possessed the property of another for a certain period, and the claim of the owner is not admissible in the competent court after the expiration of the specified legal period (Ansari and Taheri: 1384, pp. 1786-1787 (Abdullah, 1396, p. 262)).

## VI. CONCLUSION

"This research has been conducted with the aim of exploring and understanding the expiration of obligations in Islamic jurisprudence (Fiqh) and the Civil Code of Afghanistan. The following results have been obtained from the qualitative data of this research."The expiration of commitment in Islamic jurisprudence (Fiqh) and the Civil Code of Afghanistan refers to the factors and causes that lead to the termination of the obligation of the parties or one of them, and it is one of the most important issues of commitment. In summary, the findings of this research show that the commitment in Fiqh is terminated through fulfillment of the pledge, release, rescission or dismissal, impossibility of enforcing the commitment, unity of the obligation, expiration of the commitment period, set-off, assignment, death of the obligor and loss of capacity, and the commitment in the legal system of Afghanistan is terminated through the fulfillment of the commitment, and through the equivalent of fulfillment of the commitment such as payment in lieu, substitution of the commitment, representation, channeling and unity of the obligation, and other than through fulfillment such as release, impossibility of enforcing the commitment and prescription. The findings of this research in response to the main question of this research, whether the expiration of commitment in Fiqh is consistent with the expiration of commitment in the legal system of

Afghanistan with the approach of the Civil Code, show that the expiration of commitment in Fiqh is not fully consistent with the expiration of commitment in the legal system of Afghanistan with the approach of the Civil Code; rather, it has relative consistency.

The common ground in the cases of expiration of obligations is: (fulfillment of commitment, release, impossibility of enforcement of obligation, unity of liability, compensation/channel). However, rescission or dismissal, expiration of the term of obligation, assignment, death of the obligor, and loss of capacity are the cases of expiration of obligation mentioned in jurisprudence, which are not explicitly stated in the legal system of Afghanistan. Limitation of time, agency, payment in lieu, and alteration of obligation are the cases that are mentioned in the Civil Code of Afghanistan, but not explicitly addressed. Therefore, the findings of this research show that the expiration of obligation in jurisprudence has a relative, not absolute, conformity with the expiration of obligation in the legal system of Afghanistan with the approach of the Afghan Civil Code. It is hoped that the findings of this research can serve as an effective scientific and educational reference for judges of the courts, defense lawyers, faculty members of law and Sharia faculties, and students of law and Sharia.

## REFERENCES

- [1] Ayni, Badruddin. (1420 AH). *Al-Nayah Sharh Al-Hidayah*, Vol. 9. Beirut, Lebanon.
- [2] Multiple Authors. (1386 SH). *Mawsu'ah al-Fiqh al-Islami - Al-Awqaf al-Misriyah*, Vol. 23. Egypt: Ministry of Awqaf and Islamic Affairs.
- [3] Multiple Authors. (1427 AH). *Majmu'at al-Fiqh al-Kuwaitiyyah*, Vol. 2. Kuwait: Dar al-Salasil.
- [4] Rahimi, Mohammad Ishaq. (1398 SH). *General Principles of Contracts*. Mazar-i-Sharif: Rahnomward.
- [5] Abdullah, Nizamuddin. (1398 SH). *Rights and Duties (1)*. Kabul: Saeed.
- [6] Amid, Hassan. (1383 SH). *Amid Dictionary*. Tehran: Amir Kabir Publishing Institute.
- [7] Khwaja Piri, Abbas. (1385 SH). *Civil Law (3): Law of Contracts and Obligations*. Tehran: Mizan.
- [8] Katouzian, Nasser. (1385 SH). *General Principles of Contracts (7th ed.)*. Tehran: Sahami Co. in collaboration with Bahman Borna.
- [9] Katouzian, Nasser. (1385 SH). *General Theory of Obligations*. Tehran: Yalda.
- [10] Al-Sanhuri, Abdul-Razzaq. (2000). *Al-Wasit fi Sharh al-Qanun al-Madani al-Jadeed*, Vol. 1 (2nd ed.). Beirut: Al-Halabi Legal Publications.
- [11] Ansari, Masoud, & Taheri, Mohammad Ali. (1384 SH). *Private Law Encyclopedia*, Vol. 3 (1st ed.). Tehran: Mehrab Fekr.



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- [12] Jafar Langarudi, Mohammad Jafar. (1392 SH). *Legal Terminology* (33rd ed.). Tehran: Ganj Danesh.
- [13] Elmi Stanekzai, Mohammad Zarif. (1397 SH). *Principles of Civil Procedure*. Kabul: Hamed Resalat.
- [14] Stanekzai, Nasrullah. (1398 SH). *Principles of Civil Procedure*. Kabul: Saeed.
- [15] *Majallat al-Ahkam al-Adliyyah* (1381 SH). Translated by Mohammad Osman Zhubal. No publisher.
- [16] Ministry of Justice. (1355 SH). *Official Gazette No. 553: Civil Code of Afghanistan*.
- [17] In APA format, Islamic calendar years (AH) and Solar Hijri years (SH) can be left as they are but clarified in parentheses as needed.