The Rules of Discharge and Its Effects in Legal Relationships: A Comparative Study in Islamic Sharia and Civil Law

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Abstract

This study examines the legal concept of discharge (ibrā') as one of the causes of extinguishing obligations under civil law. It highlights its legal nature as a unilateral legal act issued by the creditor without compensation, with the aim of terminating the obligation owed by the debtor. The research focuses on the substantive and formal conditions required for the validity of discharge, then proceeds to analyze its legal effects on the relationship between the parties—particularly in terms of debt extinction, the removal of liability, and the annulment of associated guarantees. Furthermore, the study provides a comparative analysis of how discharge is regulated in Egyptian and Iraqi civil law, drawing on statutory texts, scholarly opinions, and judicial rulings, to present a comprehensive understanding of this legal instrument and its role in ensuring transactional stability.

Keywords: discharge, Islamic Sharia, Comparative Analysis, Civil Law

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1. Introduction

Discharge (ibrāʾ) is considered one of the important legal and Sharia-based acts aimed at terminating financial and civil obligations between individuals in a legitimate manner, reflecting the spirit of justice and tolerance in transactions. It is defined as the creditor's unilateral waiver of his right against the debtor, without requiring any consideration, which results in the extinction of the debtor's obligation. Islamic jurisprudence has emphasized the legitimacy of discharge and encouraged it in numerous contexts, whether in the Qur'an or the Sunnah (Abd al-Razzaq; Abu al-Fida Ismail ibn Umar ibn Kathir; Abu al-Husayn Muslim ibn al-Hajjaj al-Qushayri), for its role in easing the burden on those in financial distress and alleviating hardships. It is regarded as a commendable act that draws the creditor closer to God. Civil law in various jurisdictions, including Iraqi, Egyptian, and Iranian law, also recognizes discharge as a lawful means of ending obligations, while stipulating conditions and requirements to ensure its validity and legal effectiveness.

Discharge combines both humanitarian and legislative dimensions in regulating financial and civil relations. It contributes to strengthening trust and cooperation between parties, reduces judicial disputes, and enhances social and economic stability.

As a legal act, discharge is a significant means of extinguishing obligations, expressed through the creditor's waiver of his right against the debtor, whether explicitly or implicitly, wholly or partially, temporarily or permanently. It is a unilateral act issued solely by the creditor without requiring acceptance from the debtor, which gives it a distinctive legal character within civil law, particularly in contractual and financial relations. Discharge has received wide attention in jurisprudence and judicial practice due to its substantial legal consequences, whether in terms of extinguishing the debt or redefining the legal status of the parties after its issuance (Ahmad Abd, 2017; Mahmud Abd, 2018; Muhammad, 2019; Muhammad, 2020; Muhammad Sabri, 2019). Studying discharge and its effects is not merely a theoretical exercise but an analysis of a legal mechanism that plays an active role in resolving disputes, reducing financial and legal burdens on debtors, and at the same time enabling creditors to exercise their rights in accordance with their interests and will. Its importance also lies in its direct impact on the creditor–debtor relationship, as it immediately extinguishes the obligation and eliminates the right subject to discharge, unless it is conditional, temporary, or affected by a defect in consent.

The central problem of this study can be summarized in the following question: What is the legal framework governing discharge, and what are the conditions and consequences arising from it in the relationship between creditor and debtor? Is the creditor's unilateral will sufficient to extinguish the debt, or are there restrictions and safeguards that regulate this process?

From this central issue, several subsidiary questions emerge:

1. What is the difference between discharge as a legal act and discharge as a bequest?
2. To what extent does formality affect the validity of discharge?
3. Is implicit discharge legally recognized, and what are its conditions?
4. What is the effect of discharge on guarantees and rights attached to the original debt?

The importance of this research lies in its treatment of discharge as an effective legal mechanism that contributes to the settlement of financial obligations and the peaceful resolution of disputes. It is a common practice in daily life, whether in civil or commercial contracts or in amicable settlements, and it directly affects the legal position of both debtor and creditor. Therefore, understanding both the theoretical and practical aspects of discharge is essential for legal practitioners, policymakers, and litigants alike.

This study seeks to achieve the following objectives:

1. To clarify the legal nature of discharge as a unilateral act that leads to the extinction of obligations.
2. To analyze the substantive and formal conditions required for the validity of discharge in light of different civil law systems.
3. To explain the legal consequences of discharge, whether in terms of extinguishing obligations or eliminating associated rights.
4. To compare the regulation of discharge in Egyptian and Iraqi law, identifying points of convergence and divergence.
5. To present a balanced jurisprudential and judicial perspective that may contribute to harmonizing judicial applications and developing legislative texts.

2. The Legitimacy of Discharge and Its Scope

Discharge (ibrāʾ) is one of the legitimate means recognized by both legal systems and Islamic jurisprudence for terminating obligations. It is a legal act exercised by the creditor through his unilateral will to waive his right against the debtor, without requiring consideration or performance from the debtor. The legitimacy of discharge is grounded in the principle of freedom of will, which allows individuals to dispose of their rights so long as such disposal does not contravene public order or morality. Most civil codes, including the Iraqi and Egyptian Civil Codes, explicitly recognize discharge as a cause for the extinction of obligations (Abd al-Karim, 2001; Mahmud Jamal al-Din, 2004; Muhammad Abd, 2010; Sayyid Hasan, 2005; Walid Muhammad, 2011), considering it a lawful act that produces legal effects once its conditions and elements are fulfilled.

2.1. The Legitimacy of Discharge in Islamic Jurisprudence

The Qur'an contains several verses that encourage discharge and clarify its legitimacy. For example:

"And if you divorce them before you have touched them, and you have already specified for them an obligation, then half of what you specified is due—unless they forgo it or the one in whose hand is the marriage contract forgoes it. And to forgo is nearer to righteousness. And do not forget graciousness between you. Indeed, Allah is Seeing of what you do." (Qur'an 2:237)

This noble verse sets forth the ruling on dowry (ṣadaq) in the case of divorce before consummation. God has ordained that the woman is entitled to half of the specified dowry agreed upon. If the dowry has not yet been delivered to her, she is entitled to receive half of it. If, however, the husband has already paid the full dowry, he has the right to reclaim half from her. The woman, once in possession of the dowry, has full authority to dispose of it as she wishes, provided she is of legal age and sound judgment (Abu Bakr Muhammad ibn Abd Allah known as Ibn, 1972; Shams al-Din Shaykh Muhammad Arafa; Sulayman). However, the noble verse legislated for both parties—and even recommended—that one should discharge the other from what is due. Forgiveness of the dowry amount is considered a form of discharge (ibrāʾ), and thus the right to claim it is extinguished. The verse concludes with an exhortation to virtue: either the man completes the full dowry or the woman relinquishes the half that is hers.

Another Verse states:

"And if someone is in hardship, then let there be postponement until ease. But if you remit it as charity, that is better for you, if you only knew." (Qur'an 2:280)

This verse commands patience with debtors in financial distress who are unable to repay their debts. It contrasts with the practice of pre-Islamic Arabia, where upon the expiry of the debt term, the creditor would demand repayment or impose an increase on the debt amount, thereby aggravating the debtor's burden. Islam, by contrast, prohibits such exploitation and instead encourages either granting the debtor additional time or forgiving the debt altogether (Abd al-Razzaq; Abu al-Fida Ismail ibn Umar ibn Kathir), with the latter being considered superior and more virtuous.

The continuation of the noble verse states: "But if you remit it as charity, that is better for you, if you only knew" (Qur'an 2:280). This clause encourages the creditor to discharge the debtor permanently. The use of the term charity (ṣadaqa) carries profound spiritual weight for Muslims, who believe that God will recompense such an act both in this world and the Hereafter (Al-Hafiz Sharaf al-Din Abd al-Mu'min ibn Khalaf, 1990; Sayyid Muhammad Rida, 1997; Sayyid Muhsin, 1990). Thus, once the debtor is discharged, he becomes the rightful owner of the amount, and the creditor's claim is extinguished. This act is recommended, though not obligatory, resembling charity in its voluntary nature and serving as a means of drawing closer to God by erasing sins and hardships. Permanent discharge is considered superior to mere postponement or temporary remission, representing a case where the recommended act surpasses the obligatory.

Furthermore, Qur'an states: "It is not for a believer to kill a believer except by mistake. And whoever kills a believer by mistake must free a believing slave and pay blood money to the family of the deceased, unless they remit it as charity…" (Qur'an 4:92). This verse indicates that the phrase "unless they remit it as charity" refers to discharge of the blood money and forgiveness of the claim (Muhammad al-Razi Fakhr, 1981; Muhammad ibn Abd al-Rahman, 1978; Sayyid Hasan, 1984; Sayyid Muhammad Baqir, 1984; Wahbah, 1985).

2.2. In the Prophetic Sunnah

Abū Hurayrah (may Allah be pleased with him) reported that the Messenger of Allah (peace and blessings be upon him) said:

"Whoever grants respite to one in difficulty, or waives his debt, Allah will shade him under His shade on the Day when there is no shade but His." (Muhammad ibn Isa ibn Surah, 2016)

This noble hadith indicates the legitimacy of discharge and encourages it, because a person does not attain reward until he grants his brother respite in a situation of hardship in repaying his debt, and the great reward he will receive when he forgives him and discharges the debtor from his debt.

From Ayyūb, from Yaḥyā ibn Abī Kathīr, from ʿAbd Allāh ibn Abī Qatādah, that Abū Qatādah sought repayment from a debtor who hid from him, then he found him, and the man said: "I am in hardship." He replied: "I heard the Messenger of Allah (peace be upon him) say: 'Whoever wishes that Allah should save him from distress on the Day of Resurrection, let him grant relief to one in difficulty or waive his debt.'" (Abu al-Husayn Muslim ibn al-Hajjaj al-Qushayri)

This is evidence of the legitimacy of discharge and its recommendation, in that the creditor may discharge the debtor at the debtor's request, and it is also valid even if requested by the creditor. Henād narrated, he said: Abū Muʿāwiyah narrated to us, from al-Aʿmash, from Shaqīq, from Abū Masʿūd, who said: "The Messenger (peace be upon him) said:"

"A man from those before you was called to account, and no good was found in him except that he was a wealthy man who used to mix with people, and he would instruct his servants to overlook those in hardship. Allah said: We are more entitled to this than he is. Overlook him." (Muhammad ibn Isa ibn Surah, 2016)

This noble hadith encourages concession and forgiveness of the debtor through discharge, for in it lies great reward and immense recompense, and it is better than merely granting him a delay or extension to repay his debt. In this great hadith there is evidence of the legitimacy of discharge, whether temporary discharge by granting respite to the debtor in hardship, or permanent discharge by forgiving the debtor in full.

From Sulaymān ibn Buraydah, from his father, who said: "I heard the Prophet Mohammad (peace be upon him) say": "Whoever grants respite to one in difficulty will have for each day a charity equal to it." He said: Then I heard him say: "Whoever grants respite to one in difficulty will have for each day a charity twice as great." I said: "O Messenger of Allah, I heard you say: 'Whoever grants respite to one in difficulty will have for each day a charity equal to it.' Then I heard you say: 'Whoever grants respite to one in difficulty will have for each day a charity twice as great.'" He said: "For each day before the debt falls due, he will have a charity equal to it' and if the debt falls due and he grants respite, he will have for each day a charity twice as great." (Sulayman)

In Imami jurisprudence, discharge (ibrāʾ) is considered a voluntary act permitted by Islamic law. It is required that a sincere intention be present and that the act of will be free from defects. It is emphasized that discharge cannot be revoked once it has taken place, unless this is explicitly stipulated at the moment of the act. The debt subject to discharge must exist, be lawful, and either specified or capable of specification, and it must not be related to a public right or to the right of a third party for whom waiver is not permitted. (Abd al-Hamid Abd al-Muhsin Abd al-Hamid, 2013)

Discharge (ibrāʾ) is one of the important topics in the Islamic religion, for it brings ease and relieves the distress of those in hardship. Discharge encompasses all debts that are owed, and if it fulfills its pillars and conditions, it is valid upon the debtor in difficulty.

3. The Legitimacy of Discharge in Law

The legitimacy of discharge (ibrāʾ) in law is considered one of the established principles recognized by civil legislation, as it is a lawful legal act issued by the creditor through his unilateral will with the aim of extinguishing his right against the debtor. This act falls within the scope of non-compensatory contracts, which do not require consideration from the other party. Discharge is based on the principle of freedom of will, which grants individuals the liberty to dispose of their rights so long as this remains within the limits of law and public order. Therefore, the law does not oblige the creditor to claim his right if he wishes to waive it' rather, it grants him the right to discharge whenever its legal conditions are met—consent, capacity, and a lawful subject matter. (Mahmud Jamal al-Din, 2004)

Most civil laws have explicitly regulated the provisions of discharge (ibrāʾ), stipulating that it is considered one of the causes for the extinction of an obligation if carried out with valid and explicit intent. This act does not require acceptance from the debtor, since it is originally for his benefit and does not result in a new obligation, but rather leads to the termination of the existing obligation. However, the law has required in certain cases a specific form for discharge, such as being in writing or notarized when it involves large sums or commercial debts, in order to preserve financial stability and prevent disputes. (Abd al-Karim, 2001)

The legitimacy of discharge (ibrāʾ) also appears within the scope of commercial and civil transactions, as it serves as a means of amicably settling debts. This contributes to reducing pressure on the judicial system and minimizing disputes between individuals and institutions. Discharge is considered one of the legal mechanisms that reflect the principles of cooperation and trust between parties, and therefore it enjoys wide acceptance within the rules of civil law. It is regarded as an effective tool for ending obligations whenever it is used within the framework of the prescribed legal conditions. (Muhammad Abd, 2010)

The legitimacy of discharge (ibrāʾ) in Iraqi law is based on the general principles governing obligations and contracts, as the Iraqi Civil Code recognizes the creditor's right to waive his claim against the debtor through free and valid will. (Mahmud Abd, 2018)

The law regards discharge (ibrāʾ) as a unilateral legal act issued by the creditor that leads to the extinction of the obligation if its legal conditions are met, without the need for acceptance by the debtor, since discharge is in the latter's interest and does not impose any new obligation upon him. The law also affirms that discharge does not require a specific form to be valid' it may be explicit or implicit, written or oral, unless the law stipulates otherwise in special cases such as debts established by an official instrument or debts of large value. Thus, Iraqi law reflects the principle of freedom of will and the liberty to dispose of rights, making discharge a legitimate legal means of ending obligations and achieving balance between the parties to the legal relationship, while observing public order and safeguarding both public and private rights. (Ahmad Abd, 2017)

As stated in Article (420) of the Iraqi Civil Code of 1983: discharge (ibrāʾ) is a legal act issued by the creditor to extinguish his right against the debtor, resulting in the termination of the obligation, and it does not require acceptance by the debtor. Article (421) of the same law stipulates that discharge does not require any specific form' it may be explicit or implicit, unless the law provides otherwise. Article (422) of the same law states that if the debt is documented in an official instrument, or exceeds a certain threshold specified by special laws, discharge must be proven in an official manner.

In Egyptian law, the legitimacy of discharge is based on the general rules of the theory of obligation set forth in the Egyptian Civil Code issued in 1948, where discharge is considered one of the principal causes for the extinction of an obligation. It is regarded as a legal act carried out by the unilateral will of the creditor without the need for the debtor's consent, as long as this discharge does not impose new obligations upon him. (Ali Hasan, 2015)

The Egyptian legislator stipulated in Article (385) of the Civil Code the following:

"The obligation is extinguished if the creditor discharges his debtor, provided that this discharge reaches the knowledge of the debtor, unless he rejects it' in that case, the discharge produces no effect." (Sayyid Hasan, 2005)

From this article, it is clear that Egyptian law:

• Recognizes discharge (ibrāʾ) as a legitimate cause for the extinction of an obligation.

• Requires that the debtor be aware of the discharge for its effect to be realized, but does not require his acceptance unless he explicitly rejects it.

• Permits discharge as long as it is issued by the creditor's free will, which is consistent with the principle of freedom of will acknowledged by civil law.

Moreover, discharge in Egyptian law does not require a specific form unless it concerns matters where the law requires writing as a condition of proof, and it may be explicit or implicit through the creditor's conduct, such as not claiming his right or acting in a way that indicates waiver of it. (Walid Muhammad, 2011)

Thus, the legitimacy of discharge (ibrāʾ) in Egyptian law is based on a clear legislative foundation and is linked to ensuring the freedom to dispose of financial rights, provided that this does not conflict with public order or moral rules.

Discharge in Iranian law is considered a unilateral legal act issued by the creditor, resulting in the extinction of the debt if it is made with valid intent. The Iranian law does not require the debtor's consent, since discharge is in his favor and does not impose any new obligation upon him. (Sayyid Muhammad Baqir, 1984)

Discharge (ibrāʾ) is recognized whether explicit or implicit, but it is preferable that it be documented or written, especially in debts of high value or where disputes are feared. For the validity of discharge, capacity, absence of coercion, and clarity of intent to waive are required.

Iranian law relies on Imami Jaʿfari jurisprudence, which considers discharge a legally permissible act if intent and free will are present, and it may not be revoked after issuance unless otherwise stipulated. It is also required that the debt be known and lawful, and not related to the rights of others or to a public right that cannot be waived.

The Iranian Civil Code (articles reflecting Imami jurisprudence such as Article 264 or its equivalent in the Civil Code) is based on the principle of the legitimacy of discharge as one of the causes for the extinction of obligation, alongside performance, set-off, rescission, and others. Thus, the substantive conditions of discharge in Iranian law are: the creditor's clear intent, capacity to act, the legality of the debt, and that the act be free of any restrictions or conflict with Islamic or legal public order.

4. Fields of Discharge in Law

Discharge (ibrāʾ) is considered one of the important legal acts in civil and financial relations, often practiced in the context of fulfilling obligations or settlement between parties. Discharge expresses the creditor's waiver of his right against the debtor by unilateral will, which leads to the extinction of the obligation without consideration. The fields of discharge vary according to the nature of the right or debt being waived' it is not limited only to financial debts, but also includes civil rights and the rulings arising from contracts and obligations.

As for set-off (muqāṣṣah), the previous definitions mentioned demonstrate the strong connection between set-off and discharge, since each involves participation in what is established in the liability by way of exchange. Ibn al-Juzī affirmed in his definition of set-off and its relation to discharge that set-off, in its essence, is discharge but with consideration. In Fatḥ al-Qadīr, set-off is described as discharge with consideration. An example of set-off is when the creditor has against the debtor 100 dirhams, and the debtor has against the creditor 100 dinars' if they set off, the dirhams are offset against 100 of the value of the dinars, and the holder of the dirhams retains what remains of them.

The conclusion is that, as explained by the Mālikīs, set-off may be permissible or prohibited. The permissible type is analogous to participation, i.e., discharge, while the prohibited type is due to predominance of exchange or transfer when the conditions are not fulfilled. If suspicion is strong, prohibition occurs' if suspicion is absent, permissibility occurs' and if suspicion is present, disagreement is confined. (Muhammad, 2020)

In Islamic jurisprudence, discharge (ibrāʾ) is often considered among the categories of donations, due to its close connection and association with them, the foremost of which is the gift (hiba), which is a grant free of consideration or purpose. It is known that the gift in discharge is not every gift, but specifically the gift of a debt to the debtor, which is equivalent in meaning to discharge according to the majority of recognized jurists, who hold that it is impermissible to revoke gifts after delivery. As for the Ḥanafīs, who allow revocation of gifts, the gift of a debt to the debtor is entirely different from discharge, since there is agreement that discharge cannot be revoked after acceptance because it is a waiver, and the rule states: "what is waived does not return." As for the gift of a debt to someone other than the debtor, it has no relation to the subject of discharge, even if it is mentioned incidentally. (Muhammad, 2019)

Discharge (ibrāʾ) varies and diversifies in different matters, including its scope in exchanges, as discharge can enter into many financial transactions that cannot be fully mentioned or enumerated here. For example, discharge from defects in a sale: some scholars agreed that if a person sells a commodity and discharges himself from defects that he mentioned and specified, without the buyer being aware of them, then the discharge is valid—except for a narration from al-Shāfiʿī, who held that discharge from existing defects in purchased goods is not permissible under any circumstances. As for discharge from an unspecified or unnamed defect, scholars differ. The common form of discharge is for the seller to say: "I sold to you on the condition that I am discharged from every defect." The majority of jurists, including the Mālikīs and others, adopted the permissibility of sale with the condition of discharge from every defect, and the seller is discharged from all defects, and the commodity is not returned in any case. Their argument is that the right to claim for defects belongs to the buyer against the seller, and if it is waived, it falls like other obligatory rights.

The Ḥanbalīs and Shāfiʿīs, however, considered that the seller is not discharged if he stipulates discharge from defects, whether he knows of them or not, and they regarded it as deception if he did not know, and as fraud and unfairness if he did know. They cited the report of Ibn ʿUmar (may God be pleased with them both), who sold a slave with discharge, and the buyer found the slave had an illness not specified. Ibn ʿUmar said: "I sold him with discharge." ʿUthmān judged that he should swear, but he refused, so the slave was returned. They said this was a well-known case not denied, and thus it was consensus. As for the Shāfiʿīs, they considered that the seller is discharged only from a defect he shows to the buyer. The more common opinion of Mālik is that the seller is discharged from what he knows, while the prevailing opinion among the Ḥanbalīs is that the seller is not discharged, whether he knows or not, unless the buyer is aware of the defect. (Mahmud Abd, 2018)

According to Imami (Jaʿfari) jurists, discharge (ibrāʾ) is considered a unilateral legal act issued by the creditor through his sole will, resulting in the waiver of the right established in the debtor's liability without the need for his acceptance. No specific formula is required' it is sufficient to have the intent and to express the waiver of the right. (Sayyid Muhammad Baqir, 1984)

4.1. The Field of Discharge in Donations

Discharge (ibrāʾ) in donations is considered one of the important legal forms in the Iraqi Civil Code, as discharge can be used as a means of donation whenever the intention to donate and the absence of consideration are present. In this case, discharge is not viewed merely as a technical act of extinguishing the obligation, but is treated as a donation intended to achieve the debtor's benefit without compensation. Consequently, it is subject to the rules of donations in terms of capacity and conditions. (Walid Muhammad, 2011)

If the creditor waives his right before collecting it, and this is motivated by generosity, tolerance, or social or personal purposes, then such discharge (ibrāʾ) is considered an explicit or implicit donation, especially if it involves large sums or lacks a commercial reason. Discharge must be carried out according to the conditions of donation, namely that it be from a person with full legal capacity, free from coercion or gross unfairness.

In Egyptian civil law, discharge is regarded as one of the legal means that may be used as a form of donation, if accompanied by the intention to donate and the absence of consideration. In this case, the creditor waives his right against the debtor without receiving compensation, making it closer to a gift or an implicit gift, and it is subject to the rules of donations in terms of conditions and effects. (Abd al-Hamid Abd al-Muhsin Abd al-Hamid, 2013)

If discharge (ibrāʾ) is proven not to be motivated by settlement or mutual interest, but rather by generosity or benevolence, it is legally treated as a gift (hiba), and the same conditions applied to gifts are applied to it, such as: legal capacity, not being issued in a death-illness situation if it results in depriving heirs, and its susceptibility to annulment in cases of fraud or coercion. Likewise, the right being discharged must be transferable, and the intention to donate must be clear, whether explicitly or implicitly.

In Iranian civil law, discharge is considered a unilateral legal act (īqāʿ), but it may take on the character of a donation if accompanied by the intention of waiver without consideration. Discharge issued by the creditor out of benevolence or tolerance without expecting compensation from the debtor is regarded as a form of moral donation, and is then subject to the general rules related to donations, especially if the subject of discharge has significant financial value. (Mahdi, 2013)

Article (289) of the Iranian Civil Code stipulates that discharge (ibrāʾ) is effected by unilateral will, but it does not prevent it from being considered a donation if accompanied by intent. Iranian jurisprudence holds that discharge aimed at preference or personal support falls within the scope of moral gifts, and it must be issued by a person with full legal capacity and ability to donate, and it must not harm the rights of heirs if issued during death-illness.

If discharge is accompanied by the intention of donation—that is, the creditor waives his right as a donation rather than as an exchange—it is deemed legally permissible, and the debtor's receipt is not required, unlike gifts which in some forms require delivery.

4.2. The Field of Discharge in Obligations

Since an obligation is a specific occupation of liability (dhimmah), involving the joining of one liability to another in the right of claim, discharge (ibrāʾ) often enters into it as a means of freeing the liability from what it has been occupied with. Among the areas of obligation in which discharge plays a significant role is the issue of guarantee (ḍamān). According to the majority of jurists, guarantee means obligating a right established in another's liability or bringing forth the one upon whom it rests. Thus, guarantee is the exact opposite of discharge, since guarantee occupies the liability, while discharge frees it, due to the contradictory relationship between them.

The Shāfiʿīs discussed most of the rulings of discharge within the chapter on guarantee, such as its invalidity in respect to tangible property, the nullity of discharge from the unknown in kind or amount, and exceptions such as the camels of blood-money (diyah). The connection between discharge and guarantee becomes clear when we realize that liability is not freed except by performance, set-off, or discharge and the like. Therefore, discharge is one of the causes for the extinction of guarantee, and accordingly it extends to most obligations insofar as it extinguishes them. The Mālikīs provided the most detailed treatment of the oppositional relationship between discharge and guarantee in the issue of personal surety (ḥamālah bi-nafs), when the surety fails to bring forth the debtor and present him. (Ahmad Abd, 2017)

In the Iraqi Civil Code, discharge (ibrāʾ) is considered one of the causes of the extinction of obligation. It falls within the category of unilateral legal acts issued by the creditor through his sole will, resulting in the waiver of the right established in the debtor's liability, without the need for the debtor's acceptance or consent. (Mahmud Jamal al-Din, 2004)

Discharge (ibrāʾ) extends to various types of civil obligations, whether financial, such as debt or compensation, or personal, such as the obligation to refrain from a certain act. The creditor may discharge the debtor from the obligation entirely or partially, and discharge may be general, covering the whole debt, or specific, limited to part of it or to one debtor among several.

The Iraqi Civil Code No. 40 of 1951, Article (385), stipulates: "The obligation is extinguished if the creditor discharges his debtor from the debt, and discharge is effective once it reaches the knowledge of the debtor. It may be proven by all means of proof unless the law requires a specific form."

This means that discharge is effected once the creditor declares the waiver of his right and this reaches the debtor's knowledge, regardless of his acceptance, as long as discharge does not impose a new obligation upon him. Discharge covers all forms of obligations arising from contract, tort, or unjust enrichment, and even obligations resulting from judicial rulings if the right-holder consents.

The scope of discharge (ibrāʾ) in Egyptian civil law covers various types of obligations: whether financial, such as debts' compensatory, such as civil liability' or contractual, such as obligations arising from sale, lease, and others. (Ali Hasan, 2015)

Article 386 of the Egyptian Civil Code stipulates: "The obligation is extinguished if the creditor discharges his debtor explicitly or implicitly, unless it is related to the right of another or contrary to public order."

For the validity of discharge (ibrāʾ), the right must exist and be known, and discharge must be issued by a creditor with full legal capacity. The debtor's acceptance is not required, because discharge does not create a new obligation upon him but rather extinguishes an existing one.

In Iranian civil law, discharge is considered one of the legal causes for the extinction of obligation without performance, and it is effected by the unilateral will of the creditor. Article 289 of the Iranian Civil Code defines discharge as follows: "Discharge is when the creditor voluntarily and willingly waives his right."

The scope of discharge extends to all types of obligations, whether financial (such as loans and debts), contractual (such as obligations of sale, lease, or contracting), or even those arising from non-contractual sources, such as unjust enrichment or tort liability. (Muhammad Husayn, 2014)

4.3. The Field of Discharge in Disputes

Liabilities differ and multiply in rights and disputes, and the dispute is resolved and terminated either by acknowledgment (iqrār) or reconciliation (ṣulḥ), both of which are connected to discharge (ibrāʾ) in terms of freeing the bound liability. Thus, litigation ceases due to discharge by fulfillment, or discharge of the defendant through reconciliation following acknowledgment, denial, or silence, so discharge enters into both.

Reconciliation is considered a contract that resolves disputes and terminates litigation. It has various forms, such as reconciliation between spouses when discord is feared, or reconciliation between disputants over property. Jurists hold that if someone acknowledges a right and refuses to perform it until reconciliation is made on part of it, such reconciliation is invalid, because it stipulates that he will not give his due except by waiving part of it, which is forbidden as it diminishes his right. If the condition is absent, reconciliation is permissible, whether based on acknowledgment, denial, or silence, according to the opinions.

As for acknowledgment: if one acknowledges something and fulfills it in kind, it is considered performance' if he fulfills it in a different kind, it is an exchange' and if he discharges him afterward by choice and collects the remainder, it is discharge. Thus, discharge is a situation that enters reconciliation to terminate disputes. In cases of denial or silence, it is for the claimant a discharge of part of the right, while for the defendant it is a way to avoid an oath and end the dispute.

As for acknowledgment in law, it is applied to the fulfillment of debt, which is considered acknowledgment of discharge, since discharge is either discharge by waiver or discharge by fulfillment, as mentioned earlier. Both acknowledgment by fulfillment and discharge in general terminate disputes and end litigation, and therefore they are intended for the same purpose, making it possible to use one term in place of the other. This is evidenced by the fact that discharge claims include

acknowledgment: if someone says "Discharge me from such-and-such" or "Discharge me," it is acknowledgment and admission of liability, and a claim of discharge, for which evidence of discharge or fulfillment is required.

4.4. The Pillars of Discharge and the Related Rules

Discharge (ibrāʾ) is a contract like other contracts, involving parties participating in the contract, a subject matter in which the effect of the contract appears, and a formula that establishes this contract and legal act. All these elements constitute the pillars of discharge, and if any of them are absent, the contract is not formed. However, these pillars of the legal act must meet certain conditions, which are considered the basis for the validity or invalidity of the contract.

4.4.1. The Pillar of Formula

The formula in principle consists of offer and acceptance in all contracts, and it is a fundamental pillar' if it is defective, the contract is deemed void. It is also found in the contract of discharge if it depends on acceptance, as is the case in some schools of thought that require acceptance for discharge to be valid. The Egyptian Civil Code (Q.M.J.) considered acceptance obligatory in discharge, while others consider that the formula in discharge requires only the offer. This will be discussed in detail.

The Offer

The offer is the statement issued first by one of the contracting parties, indicating his will to establish the contract. The offer of discharge is made through any words that signify it, and it is the creditor's waiver of a debt owed to him by the debtor. (Muhammad, 2019)

That the offer (ījāb) must be issued by the creditor with unilateral will free from all defects, whether related to defects of will such as mistake, fraud, unfairness, and coercion, or related to impediments in his legal capacity such as insanity, idiocy, negligence, or an incidental restriction such as guardianship.

Imam Ibn ʿĀbidīn (may Allah have mercy on him) said: "If she said: I discharge you from what you owe me, you are discharged." (Muhammad ibn Abd al-Rahman, 1978)

Imam Ibn al-Humām said: "Discharge (ibrāʾ) is valid with an expression such as saying: 'I have dropped my debt from you.'" (Abu Bakr Muhammad ibn Abd Allah known as Ibn, 1972)

It is stated in the Majallat al-Aḥkām (Ottoman Civil Code): "If someone says: I have no claim or dispute with so-and-so, I have no right against so-and-so, or I have finished my claim against so-and-so, or I have abandoned it, or I have no right remaining with him, or I have fully collected my right from so-and-so — then he has discharged him." (Sulayman)

Imam Ibn Nujaym said: "If a woman says to her husband: 'I discharge you,' or if he is absent and she says: 'I have discharged my husband,' then he is discharged." (Shams al-Din Shaykh Muhammad Arafa)

Imam al-Ḥaṭṭāb said: "The statement of one who says: 'I discharge you from my house that is in your possession' means that I have dropped my claim to it. There is no doubt that the absence of claim implies waiver." (Wahbah, 1985)

Imam al-Dusūqī said: "If he discharged him from what he possesses, by saying to him: 'I discharge you from what you have,' then he is discharged." (Sayyid Muhammad Baqir, 1984)

Imam al-Ṣāwī said (Sayyid Hasan, 1984) : "If he discharged him from what he possesses, he is discharged from the trust in his possession, such as a deposit or partnership, but not from the debt in his liability. And if he discharged him from what is in his liability, then the opposite applies: he is discharged from the debt but not from the trust, because the trust is not in the liability. And if he discharged him from what is with him, then he is discharged from both. Custom and strong indications are applied' thus, if custom equates the expressions 'with' (maʿa), 'upon' (ʿalā), and 'at' (ʿinda), then he is discharged absolutely." (Sayyid Hasan, 2005)

Imam al-Māwardī, in the context of discussing remission (ʿafw) of the dowry (mahr), said (Sayyid Muhammad Rida, 1997) : "If the one remitting is the wife, then her remission is a pure discharge (ibrāʾ), and it is valid with any of six expressions: if she says 'I have remitted,' or 'I have discharged,' or 'I have abandoned,' or 'I have dropped,' or 'I have transferred ownership,' or 'I have gifted.' With any of these six expressions, the discharge is valid. And if the dowry is in the liability of

the wife and the one remitting is the husband, then it is valid with the same six expressions: remission, discharge, abandonment, dropping, transfer of ownership, or gift." (Sayyid Muhsin, 1990)

Imam Ibn Ḥajar al-Haytamī said: "The expressions of discharge (ibrāʾ) are nine: I have remitted (ʿafawtu), I have discharged (abrāʾtu), I have dropped (asqaṭtu), I have reduced (ḥaṭṭtu), I have abandoned (taraktu), I have gifted (wahabtu), I have permitted (aḥlaltu), I have waived (waḍaʿtu), and I have transferred ownership (mallaktu)." (Al-Hafiz Sharaf al-Din Abd al-Mu'min ibn Khalaf, 1990)

Imam al-Buhūtī said: "If a creditor discharges his debtor from the debt, it is valid' or if he gives it to him as charity, it is valid' or if he gifts it to him, it is valid' or if he permits him from it, it is valid' or if he drops it from him, it is valid' or if he abandons it for him, it is valid' or if he transfers ownership of it to him, it is valid' or if he pardons him, it is valid, and his liability is cleared. Likewise, if he says: 'I have given it to you,' that counts as discharge. And the expressions of gift, charity, and giving are understood to mean discharge." (Walid Muhammad, 2011)

Imam al-Shawkānī said: "Discharge (ibrāʾ) is the dropping of a debt by saying: 'I have discharged (abrāʾtu),' or 'I have permitted (aḥlaltu),' or 'He is free (huwa barīʾ),' or 'He is released (fī ḥill).' The intended meaning of these expressions is whatever conveys the indication of the concept." (Muhammad Husayn, 2014)

Imam al-Ṣanʿānī said: "The expressions of discharge (ibrāʾ) are: 'I have discharged (abrāʾtu),' or 'I have permitted (aḥlaltu),' or 'He is free (huwa barīʾ),' or 'He is released (huwa fī ḥill). Their meaning also includes: 'I have reduced from you (ḥaṭṭtu ʿanka),' or 'I have dropped (asqaṭtu),' or 'May Allah discharge you (abrāʾaka Allāh)' if the intention is discharge." (Mahdi, 2013)

Imam al-Murtaḍā said: "Discharge (ibrāʾ) is the dropping of what is in liability (dhimma) of a right or debt. Its expression is: 'I have discharged (abrāʾtu),' or 'He is released (fī ḥill),' or 'I have permitted you (aḥlaltuka),' or 'Know that I have no right upon you' — this is discharge." (Muhammad Abd, 2010)

Imam al-Murtaḍā also said: "And whoever says: 'I have permitted (aḥlaltu) so and so from what is upon him,' and he replied: 'I have permitted,' it is valid." (Mahmud Jamal al-Din, 2004)

In Imami Jaʿfari jurisprudence, the condition of offer (ījāb) in discharge (ibrāʾ) means that there must be a clear and explicit declaration from the creditor expressing his desire to relinquish the right or drop the debt. This offer is considered the will issued by the creditor, which reflects his intention to voluntarily give up his right in a definitive and irrevocable manner, unless he stipulates otherwise. (Sayyid Muhammad Baqir, 1984)

The offer must be explicit or implicit in a way that clearly indicates the intention of discharge (ibrāʾ). It may not be vague or doubtful, as such ambiguity could provoke disputes regarding the validity of the act and the extinction of the obligation. This offer must be issued by the holder of the right with the authority of free will, without coercion or compulsion, and it must be directed toward a specific subject, namely the debt or right that is to be relinquished.

Secondly, acceptance is the statement issued by the other contracting party, which signifies and agrees to the establishment of the contract. (Muhammad Sabri, 2019) For discharge (ibrāʾ) to be considered valid and effective toward its subject, several conditions must be met in the formulation, the most important of which is:

4.5. The requirement of acceptance in discharge

The majority of Mālikī jurists held that acceptance is required in discharge. They stated that discharge is a contract like other contracts, and thus it requires acceptance. The discharge must be issued by the creditor, and the debtor must express his agreement to this discharge so that the effect of the transaction appears in its proper place. (Sayyid Muhammad Baqir, 1984)

In contrast to the Ḥanafīs, who state that discharge (ibrāʾ) does not require acceptance, it takes effect merely upon being issued by the creditor, and thus becomes a binding act upon the holder of the right. (Sayyid Hasan, 1984)

In Imami Jaʿfari jurisprudence, discharge (ibrāʾ) is considered a unilateral voluntary act. It takes effect merely upon being issued by the creditor, without requiring acceptance from the debtor, unless the debtor explicitly rejects the discharge. The principle in this jurisprudence is that discharge does not need acceptance, since it is a form of relinquishing a right. It is an

extinguishment, not the creation of a new obligation, and extinguishment is effected by a unilateral will, provided it is issued by a competent person, free from defects, and connected to a legitimate and specific right. (Mahdi, 2013)

4.5.1. Rejection of discharge (ibrāʾ)

The Shāfiʿīs, in the predominant opinion, and the Ḥanbalīs held that discharge is effected by the offer (ījāb) alone without the need for acceptance, and it is not nullified by the debtor's rejection. For the Ḥanbalīs, it is considered a form of extinguishment, like the extinguishment of qiṣāṣ (retaliation) or shufʿa (preemption). For the Shāfiʿīs, its purpose is extinguishment, so discharge of debt is valid even if the debtor rejects it.

The Ḥanafīs and Mālikīs, however, held that discharge is nullified by rejection, whether in the same session or afterward, so long as explicit acceptance has not occurred before the rejection. This is because, according to the Mālikīs, discharge requires acceptance, and because it is in the nature of transfer of ownership. In consideration of this ownership aspect, the Ḥanafīs—though they regard it as extinguishment—still view it as involving the meaning of transfer of ownership, and therefore it is nullified by rejection. (Wahbah, 1985)

In Imami Jaʿfari jurisprudence, the rejection of discharge (ibrāʾ) is a concept related to the possibility of revoking the voluntary act of discharge after it has been issued. Generally, discharge is considered a final voluntary act and may not be revoked once it has been issued by the creditor, since it constitutes a complete and definitive relinquishment of the right or debt, provided that the discharge has been effected through free and valid will. (Sayyid Muhammad Rida, 1997)

Nevertheless, if the creditor stipulates at the moment of discharge (ibrāʾ) the possibility of revocation, or if there is a special agreement between the two parties allowing it, then the discharge may be subject to rejection. Likewise, in cases of mistake, error, or coercion, the discharge may be reconsidered, as such defects in will are regarded as legal grounds for rejection or annulment.

As previously mentioned, discharge does not require the debtor's consent for its conclusion, since it is considered a legal act arising from a unilateral will—that of the creditor. It becomes effective once the debtor is informed of it, and therefore, once the discharge reaches the debtor's knowledge, the creditor does not await the debtor's approval or acceptance.

4.5.2. Mutual Consent

The parties to discharge (ibrāʾ) are the creditor and the debtor. But is it required for discharge that the wills of both parties meet? This will be clarified by examining the will of each party separately.

Discharge occurs explicitly through any wording that indicates it, such as the creditor saying: "I have discharged you," "I have dropped your debt," or "You are free from the debt owed to me." It may also occur through a specific action, such as the creditor (the judgment beneficiary) waiving the judgment issued in his favor. Article 90 of the Civil Procedure Law stipulates that "waiving a judgment entails waiving the right established therein." This was affirmed by the Court of Cassation in its ruling, which stated that the appellant (defendant) acknowledged the validity of his acknowledgment recorded on the discharge document, and since he failed to prove his claim that the appellee (plaintiff) still owed part of the debt stated in the primary judgment enforced under No. 2651/B/2011 in Execution File No. 2011/94, Directorate of Execution of Karkh, and refused to direct the decisive oath to the plaintiff, the appellant is bound by his acknowledgment and may not retract it pursuant to Article 68 of the Evidence Law. Since waiving a judgment entails waiving the right established therein in application of Article 90 of the Civil Procedure Law, and since the creditor discharged the debtor, the debt is extinguished as stipulated in Article 420 of the Civil Code. Therefore, the plaintiff has the right to request a ruling preventing the defendant from claiming the amount of the enforced judgment after his discharge was subsequently established. (Muhammad, 2020)

But does discharge (ibrāʾ) occur implicitly, such as by handing over the debt instrument to the debtor? Scholars (Abd al-Karim, 2001) hold that the creditor's relinquishment of the debt instrument is not considered proof of discharge. The creditor must establish that the instrument left his possession for a reason other than discharge, such as theft. The determination of whether implicit discharge has occurred falls within the discretionary authority of the court.

Under Iraqi law, a legal presumption of discharge (ibrāʾ) is established if the debtor possesses the debt instrument. Article 119 of the Evidence Law stipulates that the presence of the debt instrument in the debtor's possession is a presumption of the

clearance of his liability from the debt, unless proven otherwise. By this provision, the legislator establishes a simple legal presumption: the debtor's possession of the debt instrument is evidence of discharge, unless the creditor proves that the instrument reached the debtor's hands for another reason, such as theft or payment.

Based on this presumption, the Court of Cassation ruled: "The appellant (defendant) argued that he had settled the claim by paying eighty million dinars of the debt stated in the three promissory notes at issue, by way of reconciliation, and that the appellee (plaintiff) had discharged the appellant of the remaining debt of fifty million dinars, and had delivered the three promissory notes to him, which indicates discharge. Since Article 119 of the Evidence Law stipulates that the presence of the debt instrument in the debtor's possession is a presumption of clearance of liability unless proven otherwise, and since the plaintiff claims that the defendant remains liable for the claimed amount of 130 million dinars, the plaintiff must be required to prove the defendant's indebtedness by written evidence. If he fails to prove it, he is granted the right to demand that the defendant take the decisive oath." (Muhammad Sabri, 2019) The presumption of discharge (ibrāʾ) is not limited to the creditor relinquishing the debt instrument, but also extends to other items leaving the creditor's possession with his consent, such as the release of a detained item or a pledged asset. Article 1349 of the Iraqi Civil Code provides: "If the pledgee waives the right of pledge, even independently of the debt, the waiver may be inferred from the pledgee voluntarily relinquishing possession of the pledged property or consenting to its disposal without reservation."

5. Conclusion

From the research, it is clear that discharge (ibrāʾ) is one of the important legal and religious means of terminating obligations, whether financial, contractual, or arising from tort liability. It embodies the principle of freedom of will and the creditor's authority to dispose of his rights without requiring compensation or the debtor's acceptance. In Islamic jurisprudence, the legitimacy of discharge is highlighted through Qur'anic texts and Prophetic traditions that encourage forgiveness and relinquishment, benefiting from its effect in relieving those in hardship and earning reward and merit. Perpetual discharge is considered superior to temporary discharge, as it represents a more complete act of devotion to God Almighty.

In civil law, whether Iraqi, Egyptian, or Iranian, discharge is regarded as a unilateral legal act issued by the creditor, resulting in the extinguishment of the obligation once the legal conditions are met: capacity, clarity of intent, and the legality of the debt. It does not require the debtor's acceptance except in certain specific cases. The scope of discharge extends to donations, obligations, and disputes, making it a means of settling rights, achieving balance between parties, reducing conflicts, and accomplishing financial and social justice in a friendly and legal manner.

Accordingly, discharge combines both the religious and legal dimensions. It is a legitimate act that benefits the debtor, reduces disputes between parties, and reflects ethical and social values in Islamic legislation and civil laws alike. This makes it an effective tool for ensuring stability in financial and civil relations, and it emphasizes the role of free will and sincere intent in regulating rights and obligations.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

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