



Khiyar Al-Majlis (Option of Withdrawal before Parting) in Sale Contract Contemporary Applications

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Abstract: This paper aims to study and analyze the notion of khiyar al-majlis from the viewpoints of prominent Schools of Islamic law. Khiyar al-majlis refers to an option for both contracting parties either to revoke or to continue with the contract before departing from the contracting session. This option is made lawful in Islamic law to ensure the absolute consent of the parties to the agreement and to give them adequate time to think carefully about the conclusion of the contract. However, the Hanafi and Maliki Schools do not advocate khiyar al-majlis, they advocate khiyar al-qabul (option of acceptance) instead. This study prefers the validity of khiyar al-majlis and discusses its applications. This is a qualitative study and classical references of the prominent Schools of Islamic law have been employed as the primary sources of the study. The study posits that in the case of a face to face contract khiyar al-majlis might be practical. But, in the case of online or distant contracts it is not practical because it would be difficult to determine whether the parties are continuing the session or not. Thus, in online contracts khiyar al-qabul is more practical and hence after making an offer and acceptance the contract is concluded, though the contracting session is prolonged.

Keywords: Khiyar al-majlis, Khiyar al-qabul, Islamic Law, Juristic Analysis, Online Contracts.

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Introduction

A legal maxim says: “The norm in transactions is that of permissibility.” Thus, people are allowed to undertake any deal like sale, purchase, etc. in whatever way they want as long as it does not contradict the *Shari’ah*. Nevertheless, in the process of conclusion of the contract, various kinds of options are legalized in order to ensure the complete satisfaction and assent of the contracting parties, and in order to safeguard their interests in the contract. *Khiyar al-majlis* is one of the options,

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which is legalized—subject to the disagreement of scholars to give ample room for the contracting parties to deliberate more on the conclusion of the contract. Sometimes parties involved in a contract may need to rethink and revise the decision of the continuation of the transaction, and in this case *khiyar al-majlis* might be utilized so that the purposes and interests of all parties are served and any potentially adverse situation is tackled.

Definition of Khiyar al-Majlis

Literally, the word *khiyar* denotes a choice on the part of the holder of the right of option, who may either confirm the act or render it void. Legally, *khiyar* means the option or right of withdrawal for the parties involved to terminate the legal act unilaterally. *Majlis* refers to the meeting for bargaining and concluding the contract. The article (181) of the *Majallah* (the full name is “*Majallat al-Aġkam al-Adliyyah*”, the Ottoman *Shari’ah* Courts Manual) states, “*The place where the sale is concluded (majlis al-bay) is the place where the parties meet together with a view to the conclusion of the sale*” (al-Majallah, p. 40). *Khiyar al-Majlis* refers to the option for the contracting parties either to continue or to revoke the contract, from the duration of the conclusion of the contract until separation or having the option to conclude the contract.

Khiyar al-Majlis is the inalienable right to cancel the contract concluded by both parties as long as they have not yet separated. The right of option is applicable to each agreement which has the nature of sale, for example, exchange of gold or silver or foodstuffs, *salam* sale, mere transfer of a thing purchased, sharing compromise for an equivalent, etc. It is also the period during which the contracting parties devote themselves to the business at hand and the contract is terminated by any event, such as physical departure from the place of business which indicates that negotiations are concluded or suspended (Alwi, 2007, pp. 51-52).

In fact, *al-Majlis* or the contracting session refers to the period of time which starts from the issuance of an offer and continues throughout the whole period in which the contracting parties are engaged in the conclusion of the contract, without showing any renunciation of contract, and it ends with the separation, which occurs by departing of one of the parties from the place of the contract, or with the agreement on the option. However, *Khiyar al-Majlis* does not start from the issuance of offer; but from associating the acceptance with that in conformance. Before the acceptance the contracting parties have the option to proceed or reject the contract, and such an option is named ‘*khiyar al-qabul*’, which precedes the conclusion of the contract. Nevertheless, sitting in real sense is not referred to

this option called *khiyar al-majlis* since it originally refers here to the duration of time preceded by the conclusion of the contract without having separated from the place. So neither sitting nor departing per se is intended here, rather the attention paid to the situation associated with the contracting parties, which refers to their involvement in the conclusion of the contract (*Mawsu'ah Fiqhiyyah*, 1992, p. 20, 169). However, when the parties declare their approval of the contract, or separate without expressing any reservation, the *khiyar al-majlis* will not exist in these cases (Razali, 2010, p. 51).

Juristic Discussion on *Khiyar al-Majlis*

There is juristic disagreement on the legality of *khiyar al-majlis*. Some jurists advocate this type of option, while others refuse it. Thus, the article (182) of the *Majallah* advocated *khiyar al-qabul*, not *khiyar al-majlis*, whereby it states: “After the offer is made parties in contracts have the option until the end of the meeting, for example, in the meeting of bargain, if one of the contracting parties makes a proposal of sale while another party does not reply to him immediately, and rather replies towards the end of the majlis, the sale is concluded, although the interval between offer and acceptance is prolonged.” However, such an interval shall not be interrupted by any action which gives an indication to dissent. Hence, the article (183) of the *Majallah* states: “After the offer and before the acceptance is made, if any party in the contract gives an indication of dissent, whether by word or act, the offer becomes void, and there is no longer room for an acceptance” (*al-Majallah*, pp. 40-41).

The Stand of the Hanafi School

The Hanafi School opines that once the offer and acceptance are made, the sale arrangement is concluded and binding, and there would be no option for any of the parties, to go back on it except in the case of a defect in goods or not having done any inspection earlier. So, there is no room for any of the contracting parties to enjoy the option of withdrawal before parting (*khiyar al-majlis*). According to this School, *khiyar al-majlis* is not established at all (al-Marghinani, 2000, p. 8, 11; al-Kasani, 2005, p. 7, 155; *al-Fatawa al-Hindiyyah*, 2010, p. 3, 10).

Using the Qur’anic verse, “You who believe! Do not consume one another’s property by false means, but only by means of mutually agreed trade. (*al-Qur’an*, 4:29), this School argues that a contract is concluded by consent, i.e. through offer and acceptance. Thus, it is complete right after the expression of offer and acceptance and not at the end of the *majlis* because dispersing from the contracting session is not stipulated in the verse (al-Kasani, 2005, p. 7, 156). Also, this is in line

with the Qur'anic verse “*and fulfill all agreements*” (*al-Qur'an*, 5:1), by which this School argues that if one depends on *khiyar*, it is as if he denies the right of the contracting parties to fulfill the contract, while basically the contract is complete when both parties consent to it. Having the option to revoke the contract, after the offer and acceptance are made, violates the right of others, and such action is not valid (al-Ayni, 2000, p. 8, 11).

The Hanafi School argues also with the *hadith* which says: “*Muslims are bound to the conditions stipulated in the contract*” (al-Bukhari, 2002, 2:2274; Abu Daud, 1997, 4:3594). Once the parties have stipulated and agreed to continue the sale by making their offer and acceptance they are required to fulfill such an agreement. Having an option of withdrawal after the conclusion of the contract invalidates the condition, while the *hadith* requires obeying the condition (al-Ayni, 2000, p. 8, 12).

The Stands of the Other Schools

According to the school of Imam Malik, *khiyar al-majlis* is invalid. He judges that the sale becomes binding once the contract is concluded, regardless of whether the contracting parties disperse from the contracting session or not. The Maliki School argues that the *khiyar-al-majlis* is an option with an unknown element since the duration thereof is not known, so it is as if someone stipulates an unknown option, and that is tantamount to an exorbitant ignorance in the contract which is severely forbidden in Islamic law. The Prophet (pbuh) says: “*one party shall not leave his/her partner lest he dismisses the contract*” (Abu Daud, 3:3456; al-Tirmidhi, 2000, 2:1247), which indicates that after offer and acceptance the partner cannot revoke except through dismissal of the contract (al-Qarafi, 2001, p. 4, 251).

The Shafi'i School, however, posits that *khiyar al-majlis* is valid and effective. The wisdom behind the option here is to give ample room for the parties to think before any decision is to be made regarding the contract. This will give justice to both the contracting parties and will prevent them from regretting the decision made later. This School argues with the *hadith* which says: “*Both parties in a business transaction have the right of option as long as they have not separated, except if it is an optional sale*”. In another narration it says: *or as long as anyone of them tells the other: “do choose (make a khiyar)”* (al-Bukhari, 2:2017, 2019; al-Nisaburi, 2003, 5:1531). Also, Ibn Umar narrated that it was the common practice (*sunnah*) in prophetic era that both parties in a contract have the option as long as they have not been separated. So, if there is an expression of offer and acceptance, the contract is yet to be enforced as long as both parties are still in the *majlis*. They have the right either to withdraw the contract or to continue with it. In fact, how the *majlis* ends will depend on custom and tradition (al-Shafi'i, 2008, 3:338; al-Nawawi, 2000, 3:113; al-Qaliyubi, 2003, 2:301; al-Mawardi, 1999, 5:32; al-Sharbini, 2006, 2:486).

The Hanbali School agrees with Shafi'i School that *khiyar al-majlis* is valid and effective. They also argue using the narration of Ibn Umar whereby the Prophet (pbuh) says, "both parties have right to enjoy the option as long as they are not separated" (al-Bahuti, 1997, 3:231; Ibn Qudamah, 2004, 5:293; al-Mardawi, 1997, 4:352).

Discussion

The Hanafi and Maliki Schools have agreed upon that once the offer and acceptance are made the contract is concluded and binding. Thereafter, it would not be taken into consideration whether the contracting parties disperse from the contracting session or not. With regards to the evidence of the Shafi'i and Hanbali Schools it could be argued that, the *hadith* of Ibn Umar refers to the option of either accepting or rejecting the offer which is known as *khiyar al-qabul*, not to the *khiyar al-majlis*. Also, the *hadith* says that both parties have this option when they are in the middle of negotiating. However, once the decision is made and contract is concluded there would be no option. Moreover, the separation, mentioned in the *hadith*, refers to the verbal dispersal, not to the physical dispersal (al-Marghinini, 8:12; al-Qarafi, 4:252).

To sum up, we may say that according to the schools of both Imam Abu Hanifa and Imam Malik, once offer and acceptance are made the contract is concluded, thus making it irrevocable; while in the Shafi'i and Hanbali Schools of law, after offer and acceptance are made the contract is yet to be concluded because both parties can still enjoy the right of *khiyar al-majlis* as long as they have not separated. Nevertheless, the researcher prefers the establishment of *khiyar al-majlis* as it affirms the mutual consent among the parties so that none of the contracting parties deals with the other's property with injustice. Also, the fulfillment of the contract comes after it becomes binding, and the contract will be binding when it is concluded, the session is terminated, and all the contracting parties dispersed with full satisfaction. Umar says that the sale is either deal or option, i.e. the sale is two types, one is the sale where option is stipulated, and other is deal where option is not stipulated. This does not mean that sale will not be binding until the session of the contract is terminated (al-Attar, 2002, 86). Nonetheless, conforming to the Hanafi and Maliki Schools of law articles (182 & 183) of the *Majallah* do not validate the *khiyar al-majlis*. The authors suggest that these articles could be modified by indicating the difference between the contract being concluded and the contract being binding. The contract might be concluded by offer and acceptance, but it would be binding once the parties disperse from the contracting session.

Withdrawal of the Offer

If any of the contracting parties makes an offer to sell or buy, such an offer can be withdrawn before the acceptance is made. Thus, the article (184) of the *Majallah* states: “If one of the two parties of the sale makes an offer, but revokes such offer before the other party has accepted, the offer becomes void, and thereafter the sale cannot be concluded by acceptance”. Further the article (185) of the *Majallah* states: “A renewal of the offer before acceptance cancels the earlier offer and its place is taken by the consequent offer” (*al-Majallah*, 41).

The Stand of the Hanafi School

According to the Hanafi School, if one of the contracting parties makes an offer of sale, the other party has an option either to accept it in the session or to reject it if wishes. This is called the option to accept or reject, because if he does not have this option, he has to continue with the contract without having consent to it. Since the contract is not concluded without the other’s acceptance, the first party has the right to withdraw his/her offer before acceptance as it does not violate the other’s right. However, if any of the parties departs from the session before acceptance, the offer would become void as departing indicates withdrawal and revocation (*al-Marghinani*, 8:7, 10; *Ibn Abidin*, 1998, 7:34). *Al-Kasani* says: “The feature of offer and acceptance is that each of them would not be binding without the existence of another. So, if anyone of them is established, it would not be required and binding unless the other half exists. Thus, if one half is found from any contracting parties the other party has the right to accept or reject it, while the first party has the right to withdraw before the other party accepts it” (*al-Kasani*, 2005, 6:469).

The Stands of the Other Schools

According to the Maliki School, once the offer is accepted in the contracting session it cannot be withdrawn, even though the session may extend after that. However, before the acceptance is made the offer can be taken back (*al-Hattab*, 1995, 6:29). The great Shafi’i scholar *Imam al-Nawawi* says that if the offer is made, whether through verbal or written means, it is valid as long as both parties are in the contracting session, and it extends till the end of the session. However, if the offer is withdrawn before departing from the session, such a withdrawal is valid and effective, and consequently the sale is not concluded (*al-Nawawi*, 3:6). In the school of *Ahmad ibn Hanbal*, since *khiyar al-majlis* is valid, the offer can be withdrawn as long as the parties are in the contracting session. However, once they depart the offer cannot be withdrawn and thus the contract would be concluded and binding.

To sum up, according to those who validate *khiyar al-majlis*, the offer can be withdrawn as long as the parties are in the contracting session; whereas according to those who invalidate *khiyar al-majlis*, the offer cannot be withdrawn after acceptance, though the parties are in the contracting session. In this respect, articles (184 & 185) of the *Majallah* conform to the Hanafi and Maliki Schools of law.

Nevertheless, *khiyar al-majlis* will be established from the first moment of conclusion of the contract, i.e. after the issuance of acceptance that is commensurate with the offer. It is not possible to specify the duration of *khiyar al-majlis* as it depends on the intention of the contracting parties. It can be long, if they want more deliberation. It can also be short if anyone of them chooses either continuation or revocation of the contract and disperses swiftly. Pursuant to this sense, it is different from *khiyar al-shart* where the duration should be defined with a specific manner. So the expiration of *khiyar al-majlis* is undisciplined as it relates to either dispersal or choosing the continuation of contract, while both are unknown in terms of the time of their occurrence. Nevertheless, there is an opinion in the Shafi'i School, which is not strong as Imam al-Nawawi's opinion, which says that the duration of *khiyar al-majlis* shall not be more than three days so that it does not exceed the duration of *khiyar al-shart* (al-Nawawi, 3:118). In short, it extends until either dispersal or choosing continuance of the contract occurs.

Although *khiyar al-majlis* has various effects on the contract, one of them is considered to be the basic or primary effect, which is intended in this option as well as in other options; whereas the other is considered to be the secondary effect. The primary effect is known as the general effect that prevents the contract from being binding, and this would result in subsequent effects which relate to the transition of the possession and so on. So the general and primary effect of the option is that the contract will not be binding until the contracting parties either disperse from the session or choose the conclusion of the contract, and before that both parties have the right to revoke the contract. All of those who advocate *khiyar al-majlis* have agreed on this effect. With regard to the subsequent effects, such as the transition of the ownership, the proponents of *khiyar al-majlis* have different opinions.

The known and famous view of the Shafi'i School is that, *khiyar al-majlis* has an effect on the execution of the provisions of the contract in terms of transferring the ownership. Hence, upon the mere conclusion of the contract with option, the ownership of the commodity would not be shifted to the buyer. Rather, it should be observed that if the contract is concluded then the commodity will be for the buyer, otherwise it will remain in the custody of the seller. Likewise, the price also will be subject to the option of meeting. This School argues that the option makes

the contract hinging on it in a way that the ownership of the subject matter will not move to the buyer unless the option is terminated through either dispersal from the meeting, or choosing the execution of the contract, or the like (al-Sharbini, 2:487).

On the other hand, the Hanbali School opines that *khiyar al-majlis* does not have any effect. So the ownership will be transferred to the buyer with inclusion of the option of meeting, and the execution of the contract does not depend on it. Also, it does not have any effect on the validity of the contract, and hence the contract generates all the relevant provisions of it –though it is revocable- throughout the session until the option ends with either dispersal or choosing the continuation of the contract. This School argues using the *hadith* of the Prophet (pbuh) which says: “whoever sells a slave that has wealth, his wealth is for the seller unless the buyer stipulates otherwise” (al-Bukhari, 2:2379; al-Nisaburi, 5:1543), and “whoever sells the palm trees after pollinating, fruits thereof will be for the seller unless the buyer stipulates otherwise” (al-Bukhari, 2:2716; al-Nisaburi, 10:1543). Here the Prophet (pbuh) made the wealth of the slave and fruits of the tree for the buyer with its mere stipulation. Also they argue that the sale with having option of meeting is a valid sale, and consequently the ownership will be transferred (Ibn Qudamah, 5:305). So, it is found that although the Shafi'i and Hanbali Schools are in agreement regarding the validity of *khiyar al-majlis*, they have different opinions regarding its effect.

Contemporary Applications

Khiyar al-Majlis in Online Contracts

If we take an example, where two parties are contracting online: one of them makes an offer and the other accepts the offer by clicking the acceptance button; we find that in this scenario according to the stand of the Shafi'i School, the contract is yet to be concluded because both parties still have the *khiyar* either to withdraw or to continue, and hence the contract is still revocable. On the other hand, pursuant to the view of Hanafi School, the contract will be concluded and thus it is irrevocable. This shows that both parties have consented to enter into a contract and hence they are now bound by the contract.

Nevertheless, the Shafi'i view might be practical in the case of a face to face contract. But in an online contract it is difficult to determine whether they are still in the *majlis* or not since there might be a situation that the other party has logged out or left his computer. So in this case the positions of the Hanafi and Maliki

School would be preferable which holds that once offer and acceptance are made the contract is concluded. This is to reduce uncertainty in online contracts as it is very difficult to determine when the *majlis* will end or to know when the other party has left the session or logged out from their computer. In fact, according to the Shafi'i School's stand, the *majlis* ends according to custom and tradition, and we may say that it is a custom in online contracts that the *majlis* may end when either party has logged out from the internet or computer (Razali, 2010, pp. 52-53).

Khiyar al-Majlis in the Contracts Concluded over Telephone

Telephone transfers the speech of the speaker sincerely. The two parties over telephone listen to each other clearly without any difference or change in the words. They are just not seeing each other with a far distance between them, albeit there is device which can transfers the sound and picture simultaneously. Thus, once the offer and acceptance are made over telephone rightly the contract is concluded. The parties at remote and not seeing each other does not cause any problem for the validity of conclusion of the contract. However, there is a possibility of forgery that one might falsify the sound of another person and enter into the agreement. If such a case happens that would be subject to the legal judgment of the courts.

In the contracts concluded over telephone the contracting session (*majlis al-aqd*) is not real, rather legal. So, the session continues as long as the parties are connected over telephone and have not finished the conversation yet. Even after conclusion of the contract if they continue the talk about other matters, whether long or short, the right of revocation is still valid and effective for them. This is because both of them are able to repeal the contract as long as they are still connected over telephone with conversation. Nevertheless, once they finish their phone call after offer and acceptance are made validly; the right of revocation for them will be invalid and ineffective since the dispersal has occurred as if they have dispersed from the session after conclusion of the contract (Salim, 2001, pp. 285-286).

It should be noted that the conclusion of contract over telephone is neither similar to the conclusion in the presence of both parties, and nor it is like the conclusion of the contract in the absence of both parties from all aspects. Form some aspects it is comparable with the contract concluded in the presence of both parties. In the contracts concluded over telephone both parties talk and listen to each other simultaneously without any delay in time. Thus, considering the time of conclusion, the contract is considered to be concluded validly just like the contract is concluded when both parties are present in the session. However, considering the place, the contract concluded over telephone resembles to the contract concluded in the absence of the both parties. In these two cases the contracting parties are

in a remote distance from each other. So, the contract concluded over telephone cannot be treated the same as the contract concluded in the presence of the parties from all aspects. Thus, it is resolved that once the phone call has ended the session will be terminated and accordingly the right to withdraw the contract will be invalid and ineffective for both parties (al-Jadili, 2004, pp. 23-24; al-Nujaymi, 2010, pp. 53-54). In addition, *khiyar al-majlis* becomes expired in the case of concluding the contracts over telephone if it is seen that any of the parties undertakes something that indicates his dissent to the contract, even if the telephone conversation still continues between them. Also, if seen that that anyone of them departs from the session then *khiyar al-majlis* becomes terminated though the telephone conversation may still be going on, unless the departure is for something necessary for completion of the contract (al-Qurah Daghi, 1990, 2:933).

Application of Khiyar al-Majlis when Offer is Made Publically

As the offer of deal can be made individually it also can be made publically through television, radio and others. Additionally, nowadays offers are made publically in the supermarkets and shopping malls through brochures, leaflets, booklets, etc. These offers are lawful as long as they do not encompass any legally prohibited element like usury, gambling, excessive ambiguity and so forth. These offers are valid until the deadline provided is expired or the customer accepts the offer and purchases the product. In this arrangement the contracting session (*majlis al-aqd*) would be considered to be continued until the deadline is terminated or the commodity is purchased. Hence, once the consumer buys the product, settles the payment and then departs from the market, the contract is concluded and irrevocable, and accordingly *khiyar al-majlis* would be expired (al-Jadili, 2004, p. 24).

Khiyar al-Majlis in the Contracts Concluded with Fax, Telex and Telegraph

Contracts can be concluded through written offer and acceptance made by fax, telex, telegraph and other communication tools. The place where the recipient receives the fax, telex or telegraph would be considered the contracting session (*majlis al-aqd*), and thus if he accepts the offer then the contract is concluded. This contracting session continues until the recipient remains available in the place where he has received the written message. So, once he departs from the place, the right to withdraw the decision before parting (*khiyar al-majlis*) would be expired and accordingly the contract becomes binding and irrevocable (al-Jadili, 2004, p. 27; Salim, 2001, p. 293).

Ibn Nujaym (1999) of the Hanafi School says: "Sale is concluded and valid by written offer and acceptance" (p. 292). Al-Marghinani (2000, 8:8) says: "Both the

writing and sending messenger are the same as the oral speech. So the session in which the letter is received or the message is delivered would be considered and effective as the contracting session". Ibn al-Humam (1995, 6:236) says that the ruling on the writing would be according to the form of the word which is written. So if it is written in imperative form the contract will not be concluded. Yet, another opinion says writing is a sign that indicates the intention of the contract not towards haggling, and hence the contract will be concluded thereof. Al-Dardir and al-Dasuqi (2003, 4:4) of the Maliki School mentioned that anything which indicates the consent, such as the words, writing, sign or any action and others, the sale is concluded with that. Imam al-Nawawi (2000, 3:6) of the Shafi'i School says: the correct stand is that the sale is concluded by writing as the consent actualizes with that. Imam al-Suyuti (2001, 2:142) and al-Ramli et al. (1993, 3:375) also mentioned the same. Al-Bahuti (1997, 3:169) of the Hanbali School opines that the sale is concluded also by writing. Also, Ibn Qayyim (1991, 1:167) says that everything which indicates the intention will be considered and followed. Thus, anything that indicates the consent of the contracting parties to the offer and acceptance, whether directly or electronically through phone call, message, fax, telex, telegraph, email, and so forth, the contract would be concluded with that as long as it does not contain any legally prohibited element. Thus, the moment and session of sending and receiving the calls or messages would be considered the contracting session. Accordingly, after ending the phone call or departing from the place *khiyar al-majlis* would be expired and terminated.

It is notable to mention that for a valid conclusion of the contracts, the unity of contract session (*ittihad al-majlis*) is required. Nonetheless, it does not mean that both contracting parties should be in the same place. They could be in the different places, yet there should have communication between them, such as the connection over phone, wireless, message communication, etc. So, the unity of contract session (*ittihad al-majlis*) means the unity in time or in place, where the particular parties become active in conclusion of the contract. So, the contracting session (*majlis al-aqd*) refers to the meeting where the contracting parties proceed to negotiate for conclusion of a contract. Therefore, Muslim jurist said that the session is what gathers the miscellany of the things (al-Kasani, 2005, 5:137). Thus, in telephone or wireless conversation the contracting session refers to the time and moment of communication as long as the discussion is about the contract and its particulars. So, if the parties over telephone change the topic of discussion, then the contracting session would be expired and accordingly *khiyar al-majlis* would become terminated (al-Zuhayli, 1990, 2:887).

As discussed above, the conclusion of contracts through modern communication tools like telephone, radio, television, wireless communication, etc. is valid and lawful. However, there are some principles and rules that should be observed in this regard. First, although the conclusion of contracts by these modern communication tools is valid, still the possibility of falsification, imitating another's voice, counterfeit, etc. does remain. Thus, if anyone alleges that he has been deceived by a fake voice, etc. he must prove it through evidence in front of the court and the legal judgment would be the arbitrator in this matter. Second, contracts over telephone, etc. would be valid in the case where the instant delivery and possession is not mandatory. Thus, the exchange of usurious items would not be valid over telephone etc. in which the contracting parties do not meet in one place. But, if there is any agency arrangement exists, like bank or any other agent, to make delivery and possession, then the usurious items could be exchanged over telephone, fax, email and other mediums. Third, as mentioned the contracting session over telephone, wireless communication etc. would be expired by termination of the telephone conversation between the contracting parties. However, this is with the condition that there is no deadline given or no option stipulated by the other party. In the case of having a deadline or an option to accept or to reject the contract, the contracting session of a telephone contract will remain valid and effective until the expiry of the deadline or the option (al-QurahDaghi, 2:941-943).

Furthermore, the Islamic Fiqh Academy in Jeddah has studied the issue of conclusion of contracts by using the modern communication tools and accordingly issued the resolution. So, the resolution no 54 (3/6) of the Academy resolved that if the agreement is completed between the parties which are absent and have not gathered in one place, while neither any of them sees the other physically and nor listens his words, and the means of communication between them is the letter or message or messenger, etc. which can be considered at present as telegraph, telex, fax, computer screen and so forth, in this case the contract is concluded once the desired party receives and accepts the offer. Likewise, if the contract is concluded between the two parties at the same time, while they are in two different places, which can be deemed at present as telephone, wireless, etc., such a contract would be considered the same as the contract that is concluded between the parties who are present in the contracting session, and therefore all provisions of a typical contract would be applied thereto. However, if the offer is made through these tools for a period specified, then the party makes the offer shall abide by the duration. Thus, his offer remains valid throughout the period and he is not allowed to withdraw the offer within the duration specified beforehand. Nevertheless, the issue of counterfeit, forgery, falsification, etc. that may occur in the case of conclusion of the contracts by using modern communication tools, would be subject to the general principles of verification and confirmation in front of the courts.

Conclusion

Unlike the views of the Shafi'i and Hanbali Schools, the Hanafi and Maliki Schools did not advocate the option of withdrawal before parting (*khiyar al-majlis*). Rather, they advocate the option of acceptance (*khiyar al-qabul*), and thus once the offer and acceptance are made, the contract is concluded even if the contracting session is prolonged. The authors, however, prefer the validity of *khiyar al-majlis* as it confirms the mutual consent of the contracting parties.

Application of *khiyar al-majlis* might be possible in the case of a face to face contract. But, in the case of online or distant contracts it would be difficult to determine whether they are continuing the session or not. So, in that case once offer and acceptance are made by any means, the contract is concluded. Nevertheless, logging out from the computer or any other devices could be considered the end of the session and accordingly the contract would become irrevocable.

In the case of the contract being concluded through phone calls, once the telephone conversation is ended the *khiyar al-majlis* would be expired. Accordingly, after that none of the parties has the right to withdraw his/her offer and acceptance unless an option has been stipulated beforehand. Additionally, if the offer and acceptance are made by any written message through fax, telex, telegraph, email and so forth, then departing from the session or place where the message is delivered or received would terminate *khiyar al-majlis*. Thus, once the party departs from the session where he receives or sends the offer or acceptance, he/she would be no more entitled to enjoy the right to withdraw his/her offer or acceptance.

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