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# Retention of Title Clause with Reference to Juristic Opinions and Iranian Positive Law

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## ABSTRACT

In contemporary transactions, particularly installment sales, the retention of title clause has become widely used as a mechanism to secure the full payment of the purchase price by the buyer. Under this clause, the transfer of ownership of the goods (subject matter of the sale) is contingent upon the payment of all installments, and the seller remains the legal owner of the goods until such payment is completed. Although this clause holds a clear and established position in Western legal systems, it encounters certain challenges within Imami jurisprudence and Iranian positive law, particularly regarding its juristic validity and conformity with established legal principles. The objective of this study is to provide a juristic analysis of the retention of title clause based on both prominent and less prominent opinions of Imami jurists and to examine its compatibility with Iranian legal regulations and practices. The research method adopted in this article is descriptive–analytical, relying on library-based sources, including authoritative juristic texts, legal literature, and judicial precedents, to analyze and evaluate the subject. The findings indicate that although some jurists consider the suspension of ownership transfer to be problematic, it can be deemed legitimate and enforceable by invoking principles such as “believers are bound by their conditions” and the general permissibility of stipulations within binding contracts. From the perspective of Iranian law, based on the principle of freedom of contract (Article 10 of the Civil Code) and the binding nature of contractual stipulations (Article 219 of the Civil Code), this clause is acceptable and enforceable; however, its proper implementation requires careful drafting of contracts and clear articulation of the parties' obligations.

**Keywords:** *Retention of title clause, installment sale, suspension in transfer of ownership, contractual stipulation, Imami jurisprudence, Iranian law, transfer of ownership*

## Introduction

The retention of title clause, particularly in modern legal systems, is recognized as one of the most important contractual instruments for securing the seller's rights in installment sale contracts. This clause, which is commonly included in contracts for the sale of automobiles, household appliances, industrial machinery, and immovable property, enables the seller to retain ownership of the goods before full payment of the price and not to transfer it to the buyer.



In Islamic jurisprudence, the validity and legal force of contractual stipulations have always been a subject of juristic attention. One of the most important rules governing this field is the rule of “believers are bound by their conditions,” which emphasizes the obligation to comply with contractual stipulations (1). This rule, derived from numerous narrations, constitutes a strong juristic foundation for accepting contractual stipulations in Imami jurisprudence, unless the stipulation is contrary to the Qur’an, the Sunnah, or reason.

Given that the retention of title clause is a form of suspension in the transfer of ownership, the first juristic challenge in examining this clause concerns the permissibility or impermissibility of suspension in conveyance of ownership. The majority of Imami jurists, relying on reasons such as the requirement that offer and acceptance be unconditional and immediate, have held that suspension in ownership transfer is invalid (2). However, some jurists, by distinguishing between suspension in declaration and suspension in the legal effect created by the declaration, have accepted the possibility of certain forms of suspension (3). On the other hand, the retention of title clause can also be analyzed as a contractual stipulation within the contract. According to Article 232 of the Iranian Civil Code, invalid stipulations are those that are unlawful, contrary to the essential nature of the contract, or uncertain. The retention of title clause is neither contrary to Sharia nor contrary to the essential nature of sale; rather, it is justifiable as a means of protecting the economic interests of the contractual parties, especially the seller. Therefore, from a legal perspective, this clause is also enforceable, unless the contract is drafted in a way that creates ambiguity regarding ownership (4).

Installment sale is among the contracts in which the retention of title clause has extensive practical application. In this type of sale, because the goods are delivered while the price is paid gradually, the seller uses this clause to secure the payment of installments and to retain the possibility of rescission or repossession of the goods in case of non-payment (5).

In foreign legal systems, the retention of title clause is also recognized. In French law, this clause is accepted under the title *clause de réserve de propriété*, and the seller may recover the goods in the event of non-payment (6). In German law as well, under the rules governing sale, retention of title is regarded as a legal instrument for securing the seller’s rights. Nevertheless, some Iranian jurists, relying on Articles 362 and 363 of the Civil Code, which refer to the effects of sale and consider transfer of ownership to be among the consequences of the contract of sale, have expressed doubts about accepting the retention of title clause (7). This view is mainly based on the traditional analysis of sale as a translative contract in which ownership is transferred immediately upon conclusion of the contract. By contrast, other jurists, relying on the principle of freedom of contract under Article 10 of the Civil Code and considering the parties’ intention, regard the retention of title clause as valid and enforceable within the framework of contractual obligations (3). This view is more compatible with later juristic foundations that consider intention effective in determining the effects of a contract.

In juristic analysis, it must be noted that jurists consider lawful any stipulation that is rational, customary in commercial practice, and useful. The retention of title clause is, from a customary perspective, common and accepted in many transactions, and the buyer accepts such a stipulation knowingly and voluntarily. Therefore, this clause is not only inconsistent with the general rules of jurisprudence, but may also be accepted under the category of rational stipulations (8).

From the perspective of judicial practice, some courts have regarded the retention of title clause as valid, provided that it is expressly stated in the contract and agreed upon by the parties. In the absence of express

stipulation, proving it will be difficult for the seller, and ownership may be deemed to have been transferred to the buyer.

Economically, the retention of title clause plays an important role in protecting the seller's interests. Installment sale without such a clause may expose the seller to the risk of buyer default, particularly in markets with lower economic stability. Under these circumstances, the retention of title clause constitutes an appropriate instrument for reducing the seller's credit risk (9).

In comparative law, many countries have developed specific rules to resolve disputes concerning retention of title clauses. For example, in England, under the rules governing retention of title clauses, this clause has been recognized in sale contracts, especially in the law of sale of goods (10). Despite the broad acceptance of this clause in various legal systems, challenges such as conflict with the rights of third parties, attachment of the property by the buyer's creditors, or the buyer's bankruptcy may become matters of debate. In such cases, determining whether ownership still belongs to the seller or has been transferred to the buyer is of great importance.

In Imami jurisprudence, rules such as preliminary stipulation, the obligation to fulfill contracts, the rule that the accessory follows the principal, and the principle that the contract follows the stipulation are among the rules that may be invoked in analyzing the retention of title clause (11). These rules show that if a stipulation is beneficial to the parties and rational, it may be incorporated into a contract.

From a practical perspective, to prevent disputes, the retention of title clause must be inserted precisely and expressly into the text of the contract, and the parties must knowingly accept it. It is also recommended that official documents or valid certificates be prepared to prove the clause in the event of a dispute. Given economic developments and the need for contractual instruments in modern commercial transactions, acceptance of the retention of title clause is not merely an economic necessity but also a legal requirement for the development of contractual security. The rules governing this clause should be updated in Iranian law, and judicial practice should provide a fairer interpretation of it by understanding its nature. Finally, it must be emphasized that although traditional jurisprudence contains sensitivities regarding suspension in ownership transfer, dynamic Imami jurisprudence and the Iranian legal system, by relying on principles such as freedom of contract, rationality of stipulations, and the parties' interests, can recognize this clause and create a clear legal framework for it.

### **Conceptualization and Background of the Retention of Title Clause**

The retention of title clause is a contractual stipulation under which the seller has the right to retain ownership of the subject matter of sale until full payment of the price. This clause has become particularly important in installment sales and is used as an instrument for securing the buyer's financial obligations. In legal literature, this clause is known as the retention of title clause in Anglo-Saxon legal systems and as *clause de réserve de propriété* in the French legal system (6, 10).

The concept of retention of title is not expressly regulated in Iranian civil law, but considering the principle of freedom of contract under Article 10 of the Civil Code and the general rules governing contractual stipulations under Articles 232, 233, and 219 of the Civil Code, it can be legally analyzed and accepted. Accordingly, the parties to a contract may agree that the transfer of ownership of the subject matter of sale remains suspended until the realization of a specified condition, such as full payment of the price. From the perspective of Imami jurisprudence, the debate over suspension in ownership transfer and the possibility of accepting it in the contract of sale is one of the principal challenges in analyzing the retention of title clause. Imami jurists have generally deemed suspension

in the declaration of contract impermissible, but some of them, by distinguishing between declaration and the legal effect created by declaration and by relying on the rule of the validity of rational stipulations, have regarded this clause as valid (2, 8).

Historically, the practical background of the retention of title clause in comparative law goes back to the nineteenth and twentieth centuries, when the development of installment trade in Europe and the United States led to the spread of this clause. In French law, this clause entered judicial practice in the early twentieth century and was later institutionalized in positive law, including French commercial legislation. In German law as well, under the title *Eigentumsvorbehalt*, this clause has long been accepted and in some cases even enjoys priority against third-party rights. In Iranian law, the use of the retention of title clause has more often appeared in practice and customary contracts than in statutory texts. Examples of this clause can be found in installment sale contracts for automobiles or household appliances, where manufacturing or selling companies do not transfer the official title deed to the buyer until full payment of the installments. Nevertheless, no specific statutory provision has yet been enacted on this matter in Iranian law, and its acceptance is mostly based on juristic analysis and the practical approach of the judiciary (4, 9). The juristic background of this clause should also be sought in discussions of stipulations within contracts and the role of the parties' intention in determining contractual effects. Many jurists, such as the author of *Al-Urwah*, Shaykh Ansari, and Allamah Hilli, have adopted a relatively open and flexible approach to the validity of rational stipulations, and the retention of title clause may also be situated under the same principles, provided that it does not conflict with Sharia texts (3, 11). Overall, the retention of title clause is a concept that, despite the absence of express statutory recognition in Iranian law, may have a valid legal position through the support of juristic rules and general principles of contracts. With the increase in installment transactions in contemporary society, developing and institutionalizing this clause in positive law is a necessary step for maintaining balance in contractual relations and protecting the legitimate interests of both seller and buyer.

### *Practical Application of the Retention of Title Clause in Modern Transactions*

#### With Emphasis on Installment Sale

In today's legal and commercial environment, one of the serious challenges in transactions is securing the performance of the parties' financial obligations, especially in installment sales. With the expansion of credit facilities and installment sales of high-value goods such as automobiles, household appliances, real estate, and industrial machinery, the retention of title clause has gained increasing importance as an efficient instrument for controlling the seller's risk and encouraging the buyer's performance of obligations. In installment sale, the seller delivers the goods, but the buyer pays the price in several installments at specified intervals. This structure inherently involves the risk of non-performance by the buyer. In such cases, if ownership of the goods has been transferred definitively, the seller, in the event of non-payment of installments, only has the right to resort to court and bring an action for payment, which is a time-consuming and sometimes ineffective process. By contrast, if the retention of title clause is included in the contract, the seller remains the owner of the goods until full payment of the price and will have the right to recover the specific goods in the event of the buyer's breach. This provides the seller with a stronger and more effective enforcement mechanism (10).

In practice, companies engaged in installment sale of automobiles or large household-appliance stores usually state in their contracts that ownership of the goods remains reserved for the seller until the final installment is paid.

This clause is even included in official contracts, and non-payment of an installment leads to rescission of the contract and repossession of the goods. In practice, some sellers also refrain from transferring official title documents to the buyer until full settlement, and although this measure is sometimes taken without an express retention of title clause, it produces a similar effect.

Economically, the retention of title clause increases the supplier's confidence in collecting receivables and consequently increases willingness to sell on an installment basis, which facilitates the circulation of goods in the market and improves access by lower-income groups to capital goods (9). This clause can also reduce default rates and minimize the need for judicial litigation.

In comparative law, the retention of title clause has been widely used in installment sales, and specific regulations have even been adopted for it. For example, in French law, the legislature recognizes the right of a seller who has included a retention of title clause in the contract to recover the goods in the event of non-payment. In German law as well, the Civil Code expressly permits the retention of title clause and even grants the seller priority against third parties, subject to registration in official registers. In Iranian law, although the legislature has not yet expressly referred to this clause, it may be considered a valid contractual stipulation by relying on Article 10 of the Civil Code and the general rules of contracts, provided that it does not conflict with the essential nature of the contract. This clause has also been invoked in Iranian judicial practice; some courts, relying on the inclusion of a retention of title clause, have recognized the seller's right to repossess the goods, especially where the goods remain in the buyer's possession and no official transfer has occurred. Nevertheless, full acceptance of the retention of title clause in Iranian law faces two obstacles: first, lack of clarity regarding the acceptance of suspension in ownership transfer by some jurists, who consider it contrary to the requirement of immediate effectiveness in sale; second, ambiguity concerning the effects of the clause against third parties, including the buyer's creditors or persons who have purchased the goods in good faith. These obstacles require the legislature to enact specific rules to clarify the legal status of the retention of title clause and determine the rights of the parties and third parties. Overall, the retention of title clause in installment sale is a rational and functional institution in the modern transactional system, capable of both protecting the seller's interests and regulating contractual relations with lower risk. Including this clause in contracts, especially in long-term sales, is an instance of preventing legal disputes and enhancing economic security in transactions.

#### Application in Leasing Contracts, Automobile Sales, and Real Estate Transactions

In contemporary financial and commercial contracts, the retention of title clause plays an important role in securing the rights of sellers and suppliers, and one of the prominent areas of its use is leasing contracts. In this type of contract, which is a form of lease ending in ownership, ownership of the subject matter remains with the leasing company from the beginning and is transferred to the lessee only after the installment payment period has ended and all obligations have been fully performed. This structure is recognized particularly in Western legal systems; for example, in French and German law, the retention of title clause is not only considered valid but is also enforceable against third parties (10). In Iranian law, despite the absence of express statutory recognition, this clause may be considered lawful and enforceable by relying on Article 10 of the Civil Code and the principle of autonomy of will, especially if the clause is clearly included in the contract and does not conflict with the nature of the contract (4). In practice, leasing companies, especially in the field of automobiles, usually do not transfer official title documents to the customer until full settlement, and in the event of non-payment of installments, they may

recover the specific property. This practice is a form of applying the retention of title clause, implemented within the framework of lease ending in ownership or conditional sale. This legal structure is designed to preserve the seller's interests and prevents the buyer from claiming definitive ownership before paying all installments; in the event of breach, the seller may rescind the contract and repossess the property under this clause (9). The retention of title clause is also highly visible in installment automobile sale contracts. Many automobile sales companies in Iran, whether public or private, stipulate in their installment sale contracts that the vehicle title document will remain with the company until the end of the installment period and payment of all debts. This clause effectively suspends the transfer of ownership, and the seller is deemed the owner of the vehicle until all payments are completed. This type of stipulation has been considered enforceable and binding under the general rules of contracts and the principle of compliance with contractual stipulations (12).

In judicial practice as well, Iranian courts have issued several judgments in favor of sellers seeking repossession of vehicles on the basis of a retention of title clause, provided that the clause was expressly stated in the contract and that the parties' written agreement existed. For example, in one judgment issued by Branch 22 of the Tehran Province Court of Appeal, given the express inclusion of the retention of title clause and the buyer's failure to pay installments, the seller was recognized as entitled to rescission of the contract and recovery of the specific vehicle. In real estate transactions, especially in large construction projects carried out by mass developers, the retention of title clause is usually applied in the form of making transfer of the title deed conditional upon full payment of installments. In such cases, the seller or developer refuses to transfer the official title deed until all installments have been received. Legally, this clause is recognized as a suspensive stipulation in the transfer of ownership and may be compatible with the general principles of contracts in Iranian law (4).

In Imami jurisprudence, although some jurists maintain that ownership must be immediately transferred in the contract of sale, many others have accepted a suspensive stipulation in the transfer of ownership, provided that the suspension does not affect the contract itself but concerns its effects. For example, jurists have allowed suspension in acts, including transfer of ownership, provided that it is expressly stipulated in the contract and does not contradict its essential nature (13). In practice, real estate sellers are unwilling to transfer official title as long as the price has not been fully paid, and although this conduct is sometimes not included as a written stipulation in the contract, it may be treated as the practical application of a retention of title clause. This clause, especially under conditions in which the housing market experiences severe fluctuations, serves as an instrument for reducing risk and securing the collection of receivables (14).

Economically, the application of the retention of title clause in such transactions increases sellers' confidence and encourages a healthy flow of installment transactions. Despite these advantages, the absence of a specific statute in Iran expressly determining the legal status of this clause against third parties remains one of the important challenges in this field. In advanced countries, registration of the retention of title clause in official registers allows it to be invoked against creditors and third parties, whereas in Iran, in the absence of such a structure, the clause is treated as valid only within the relationship between the contractual parties (15). Given the broad application and positive effects of the retention of title clause in modern transactions, especially in systems such as leasing, installment automobile sales, and real estate transactions, it appears that the Iranian legislature should move toward clarifying this institution and enacting specific rules on its registration and enforceability, so that potential conflicts with third-party rights are minimized and possible abuses are also prevented.

### *Historical Background and Juristic and Legal Developments*

Studying the historical development of the retention of title clause requires reference to three main legal systems: Roman law, the common law system, and civil law, particularly French law. This concept, which today has broad application especially in installment sales, leasing, automobile sales, and major commercial transactions, initially emerged as a response to the needs of modern trade for protecting sellers against buyers who do not pay the full price.

In Roman law, the transfer of ownership was subject to very strict principles. Ownership was transferred only upon the fulfillment of conditions such as physical delivery and the intention to transfer, known as *traditio*. In classical Roman law, the idea of conditional ownership was not highly developed, but market custom and certain commercial practices accepted a degree of separation between ownership and possession in some cases. However, a clause known as the retention of title clause in the precise modern sense was not recognized in Roman law (16).

In the common law system, the turning point in the development of the retention of title clause was the landmark judgment in *Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd* in the 1970s. In that case, the English court recognized the validity of a clause under which the seller retained ownership of the goods until full payment of the price. This judgment was quickly accepted in English trade and then in other countries and became known as the “Romalpa clause.” Under this approach, the seller may recover the goods in the event of non-payment, even if the goods are in the possession of the buyer or a third party, provided that the clause has been properly drafted and proved (10).

In French law, particularly after the reforms of the late twentieth century, the Civil Code expressly accepted the retention of title clause. French law provides that ownership of sold goods may remain reserved for the seller until full payment of the price. This rule protects the seller against the risk of non-payment by the buyer, provided that the retention of title clause is included in a written contract and is enforceable through official or documentary registration systems (6).

In Islamic jurisprudence, the matter is more complex. The governing principle in sale under Imami jurisprudence is that sale must be unconditional, and suspension in the contract itself causes invalidity (3). Nevertheless, Imami jurists have distinguished between suspension in the legal effect and suspension in the declaration itself. If the stipulation is drafted in such a way that the effect of the contract, namely transfer of ownership, depends on the occurrence of a future condition, while the contract itself has been concluded unconditionally, many jurists consider it valid. Allamah Hilli in *Qawa'id al-Ahkam* and the author of *Jawahir al-Kalam* explicitly refer to this distinction (2, 17). For example, if it is said, “I sold this item to you on condition that its ownership be transferred after payment of the final installment,” some jurists do not consider this suspension of effect incompatible with the nature of sale, because the contract itself has been concluded and only its effects have been suspended. Shaykh Ansari in *Al-Makasib* also accepts this analysis, provided that the stipulation is not contrary to the essential nature of the contract (3). Sunni jurisprudence, although generally opposed to suspension in contracts in its principles, has shown flexibility in cases where market custom accepts the implementation of the stipulation. Ibn Qudamah, in *Al-Mughni*, indicates that if the buyer enters into the contract with knowledge of a condition suspending ownership, the contract is valid and the transfer of ownership depends on the realization of that condition (18).

In Iranian positive law, despite the absence of express reference to the retention of title clause in the Civil Code, its legitimacy may be inferred by invoking the constitutional requirement of compliance with Islamic rules and Articles

10 and 219 of the Civil Code, which embody the principles of freedom of contract and binding force of contracts. Some jurists, such as Katouzian, have noted that suspension in the effect of a contract, where agreed by the parties, is legally justifiable, especially in installment transactions, and does not conflict with autonomy of will or public order (4).

In judicial practice, there are also cases in which the retention of title clause has been accepted either expressly or implicitly. For example, in a judgment of Branch 22 of the Tehran Court of Appeal, the stipulation that ownership would be transferred after full payment of the installments was treated as the parties' agreement arising from their free intention and was recognized as enforceable (19). Ultimately, the historical development of the retention of title clause shows that although Roman legal systems and traditional Islamic jurisprudence initially faced doubts in accepting this clause, today, within the framework of modern concepts such as freedom of contract, the principle of validity, and commercial custom, the position of this clause in jurisprudence and law has become stronger than before, and its legitimate use in installment transactions, commercial sales, and leasing contracts is possible.

### Juristic Analysis of the Retention of Title Clause

From a juristic perspective, the retention of title clause means that despite the conclusion of the contract of sale, the seller suspends transfer of ownership of the subject matter until full payment of the price. Juristically, this clause stands at the intersection of two important discussions: suspension in contracts and contractual stipulations. Therefore, its analysis requires a detailed examination of jurists' opinions in these two areas.

In Imami jurisprudence, the majority of jurists believe that suspension in the contract itself causes invalidity, but suspension in the effects of the contract may be valid in certain cases. Shaykh Ansari states in *Al-Makasib* that contracts are not subject to suspension; that is, a contract must be unconditional, and if suspension relates to the declaration itself, the contract is invalid (3). However, if the contract is concluded unconditionally and only its effect, such as transfer of ownership, is suspended, a group of jurists do not regard it as incompatible with the nature of the contract of sale, especially if the parties have expressly agreed to it (3). On this basis, jurists such as the author of *Jawahir*, Allamah Hilli, and some later jurists have distinguished between suspension in declaration, which is invalid, and suspension in effects, which may be valid in certain cases. For example, if the seller says, "I sold you this item on condition that you own it after full payment of the price," the contract has been concluded unconditionally, but its effect, namely conveyance of the subject matter, has been made conditional upon realization of the stipulation. Here, it may be said that commercial custom also makes transfer of ownership dependent on full payment of the price, and this custom may influence the interpretation of the contract's content (2).

Moreover, in Imami jurisprudence, contractual stipulations have a broad position and are enforceable so long as they are not contrary to the essential nature of the contract or to Sharia. Jurists generally recognize stipulation of act, stipulation of quality, and stipulation of result, and if these are capable of realization, they consider them enforceable. In the retention of title clause, one may say that there is a stipulation of result under which the transfer of ownership, which is the result of the contract of sale, is made dependent on full payment of the price. Although some may regard it as contrary to the nature of the contract, many jurists believe that the nature of the contract is transfer of ownership according to the parties' agreement, and if the parties agree that transfer depends on a specific condition, this is not inconsistent with the contract's nature (8). On the other hand, the rule that people have dominion over their property and the principle of fulfillment of contracts also indicate that persons may structure their contracts on the basis of intention and agreement within the framework of Sharia rules, provided that the stipulation is not

unlawful (1). In this respect, if the seller and buyer agree that ownership of the goods will be transferred after full payment of the price, Imami jurisprudence can defend such a stipulation in view of the principle of dominion and the obligation to fulfill promises.

In Sunni jurisprudence, although the dominant attitude toward suspension, especially in the Hanafi school, is cautious and sometimes negative, the Maliki and Hanbali schools allow the acceptance of some suspensive stipulations. Ibn Rushd, in *Bidayat al-Mujtahid*, refers to the possibility of the legitimacy of stipulations in sale, especially when the buyer and seller agree to them and the stipulation does not harm either party (20). Ibn Qudamah also considers the acceptance of a suspensive stipulation in the effect of a contract justifiable if market custom recognizes it and it is not contrary to the fundamental rules of sale (18). In the final analysis, it must be noted that one of the grounds for the legitimacy of the retention of title clause in Islamic jurisprudence is attention to rational interests and the customary needs of contemporary commercial society. Since the retention of title clause is designed to protect the seller and prevent infringement of the seller's rights against buyers who delay or refuse payment of the price, it may also be justified within the framework of the rule of no harm and the rule of contractual justice. Moreover, many jurists, in discussions concerning installment sale, have recognized the legitimacy of a stipulation suspending ownership, provided that the nature of the contract of sale is not incompatible with suspension of the transfer of ownership. In fact, precise juristic analysis shows that although the retention of title clause is new in the Islamic juristic tradition, it can be considered a valid and enforceable sale by relying on general principles and rules such as contractual stipulation, suspension in effect, autonomy of will, and the rule of no harm.

#### *Analysis of the Validity of the Clause from the Perspective of General Juristic Rules*

Examining the validity of the retention of title clause in Imami jurisprudence requires analyzing it in light of the general rules governing contractual stipulations. In jurisprudence, stipulations are generally divided into three categories: stipulation of quality, stipulation of act, and stipulation of result. The retention of title clause is an instance of stipulation of result because, in it, the contractual parties agree that a specific result, namely the buyer's acquisition of ownership, will depend on the realization of a specified matter, namely full payment of the price. The validity of such a stipulation under the general rules depends on its conformity with the conditions of legitimacy of stipulations, which jurists have discussed under the title of valid stipulations. The rule that believers are bound by their conditions, which forms the juristic basis for the binding force of stipulations, appears in authoritative narrative sources, and Imami jurists have regarded it as an independent proof for the validity of stipulations. When combined with other juristic principles such as fulfillment of contracts and autonomy of will, this rule indicates the validity of any stipulation that is not contrary to the Qur'an, the Sunnah, or the nature of the contract (3).

One of the essential conditions for the validity of a stipulation is that it must not be contrary to the nature of the contract. The nature of the contract of sale is the transfer of ownership of the subject matter in exchange for the price. If it is stipulated that transfer of ownership will be deferred until full payment of the price, the question arises whether this stipulation conflicts with the nature of sale. The dominant juristic view is that as long as the contract itself has been concluded unconditionally and the suspension concerns only the effect of the contract, it is not incompatible with the nature of the contract. In other words, a stipulation that delays the effect of a contract does not necessarily invalidate the contract or the stipulation; rather, it may be considered a valid stipulation within the scope of the parties' intention (8). Jurists also emphasize the rationality of the stipulation, meaning that the stipulation must not be irrational, futile, or unusual. The retention of title clause is not only rational but is also widely

used in modern transactions, including installment sales, leasing, and automobile sales. Therefore, from the perspective of custom, such a stipulation is accepted and reasonable, which is itself one of the fundamental criteria for the validity of stipulations (21). The rule of no harm may also support the validity of this clause. Because the main purpose of the retention of title clause is to protect the seller against the risk of non-payment of the price, this clause prevents harm and in fact functions as an enforcement mechanism. Jurists have regarded the rule of no harm in Islam as one of the principles justifying protective rules in contracts (1). On the other hand, examining the clause from the perspective of the rule that people have dominion over their property is also helpful. According to this rule, individuals have authority over their property and may transfer it under any rational and lawful stipulation or make its transfer conditional. Therefore, the seller has the right to retain ownership of the subject matter until a specific condition, namely payment of the price, is fulfilled. This is consistent with the principle of dominion and does not conflict with Sharia rules (1). Overall, given the conformity of the retention of title clause with the rules governing the legitimacy of stipulations, it may be said that this clause is acceptable in Imami jurisprudence. It is not incompatible with the nature of the contract; rather, it accords with principles such as autonomy of will, prevention of harm, the obligation to fulfill contracts, and persons' dominion over their property. Thus, the validity of the retention of title clause may be justified both from the perspective of the specific rules of contractual stipulations and from the perspective of general juristic rules.

#### *Preliminary Stipulation, Contractual Stipulation, and Stipulation of Result*

In Imami jurisprudence, stipulations have been discussed from various perspectives, and one of the most important classifications is the distinction between preliminary stipulation, contractual stipulation, and stipulation of result. This is because analyzing the validity and legal enforceability of a stipulation, especially in emerging cases such as the retention of title clause, depends on an accurate understanding of these categories. Imami jurists, relying on general rules such as “believers are bound by their conditions” and the principle of fulfilling promises, have addressed the legitimacy of stipulations that are inserted into contracts or that somehow relate to their effects (1). A preliminary stipulation is a stipulation made outside the framework of a contract and without connection to a specific contractual obligation. For example, if someone undertakes to sell property to another person in the future or to perform an act without any contract having been concluded, this undertaking is analyzed as a preliminary stipulation. The majority of Imami jurists, such as Shaykh Ansari, do not consider such a stipulation binding, because they believe that a stipulation without the support of a contract lacks legal and juristic authority and is not covered by the rule that believers are bound by their conditions (3). However, some later jurists, such as Imam Khomeini, believe that if a preliminary stipulation is expressed with the intention of commitment and customary obligation, it is morally and juristically binding and has effect by virtue of rational commitment (22).

By contrast, a contractual stipulation is one that is introduced within a binding or non-binding contract, and the obligation to comply with it is connected to the original obligation arising from the contract. Because of its connection with the contract, this type of stipulation has legal and juristic validity. Jurists believe that a contractual stipulation is valid if, first, it is not contrary to the essential nature of the contract; second, it is not contrary to a Sharia text or a valid juristic rule; third, it is rational and reasonable; and fourth, it is not uncertain or ambiguous (23). The retention of title clause, under which the seller in an installment sale retains ownership of the goods until full payment of the installments, is usually examined within this framework. In this case, the clause is part of the obligations included in the contract and, as long as it is not contrary to the essential nature of the contract, it is considered valid and

enforceable. For example, if a contract of sale expressly states that “ownership of the subject matter will be transferred after full payment of the price,” many jurists regard such a stipulation as permissible, because the sale itself has been concluded and only its effect, namely transfer of ownership, has been deferred (8).

The third type is stipulation of result. Unlike stipulation of act, this stipulation concerns the realization of a direct legal result in the juridical sphere. For example, the parties agree in a contract that upon conclusion of the contract, a specific legal result will also occur, such as stating that “upon payment of the final installment, the buyer will immediately become the owner of the subject matter.” In this case, the stipulation is an instance of stipulation of result. Imami jurists consider stipulation of result valid when it concerns a possible, lawful, and rational matter. They emphasize that stipulation of result is valid when the suspension does not relate to an unlawful, impossible, or uncertain matter and the intended result falls within the scope of the parties’ intention (2). From a juristic perspective, the retention of title clause also falls within this framework, because the transfer of ownership of the subject matter is made conditional upon full payment of the price. This suspension is not only compatible with the nature of the contract, but also falls within the general rules governing the legitimacy of stipulations. According to jurists such as the First Martyr and the Second Martyr, suspension of the effect of the contract, and not of the contract itself, does not invalidate the contract or stipulation if its result is rational and customary (23). Consequently, depending on how it is incorporated into the contract, the retention of title clause may be an instance of contractual stipulation or stipulation of result, and in either case, if the general conditions for the validity of stipulations, such as rationality, enforceability, and lack of conflict with Sharia and the contract, are satisfied, it is juristically valid and binding. This analysis is an important step in connecting traditional juristic concepts with contemporary legal needs, especially in the fields of installment sale, credit sales, and leasing.

#### *Valid and Invalid Stipulations According to the Rule “Believers Are Bound by Their Conditions”*

The well-known rule “believers are bound by their conditions” is one of the important rules of the jurisprudence of transactions. According to it, Muslims must comply with the stipulations they include in their transactions and contracts. The basis of this rule is a narration from the Prophet or the infallible Imams reported in Shiite hadith sources, the content of which is that believers are bound by their conditions, except for a condition that prohibits what is lawful or permits what is unlawful (1). Under this rule, the presumption is that a contractual stipulation is valid and binding unless it conflicts with an express Sharia rule. Accordingly, jurists have divided stipulations into two main categories: valid stipulations and invalid stipulations. This classification is fundamental in relation to the rule mentioned above.

Valid stipulations are stipulations that do not conflict with the nature of the contract, are not contrary to a Sharia text or Sharia rulings, are rationally understandable and enforceable, and are not affected by uncertainty or excessive risk. In other words, these are stipulations that fall within the scope of the rule “believers are bound by their conditions,” and compliance with them is obligatory. For example, in a contract of sale, if it is stipulated that the seller will deliver the subject matter within three days, that the buyer will pay the price in installments, or that in a lease contract the lessor must carry out repairs, these stipulations are valid. Likewise, stipulation of benefit, meaning stipulation to perform or refrain from an act, stipulation of quality, meaning the existence of a specific feature in the subject matter, and stipulation of result, meaning realization of a legal effect, are lawful and valid if they comply with the general rules of jurisprudence (2).

By contrast, invalid stipulations are stipulations that have one of the following characteristics: first, a stipulation contrary to the Qur'an or the Sunnah, such as a stipulation eliminating payment of the dower in marriage; second, a stipulation contrary to the essential nature of the contract, such as stipulating in a contract of sale that transfer of ownership will not occur; third, a stipulation requiring an impossible or irrational matter, such as bringing the dead back to life; and fourth, an uncertain and ambiguous stipulation that causes excessive risk. Jurists have stated that if a stipulation is invalid, depending on the type of contract and stipulation, either the whole contract may be invalidated or only the stipulation may be invalid while the contract remains in force. This issue depends on the rules governing the severability of the stipulation from the contract (3). According to the dominant juristic view, invalid stipulations are divided into several subcategories: a stipulation that prohibits the lawful, a stipulation that permits the unlawful, and a stipulation contrary to the nature of the contract. A stipulation prohibiting the lawful is one that prohibits something lawful, such as stipulating in a marriage contract that the husband has no right of divorce. A stipulation permitting the unlawful is one that allows something unlawful, such as stipulating in a contract that the parties may receive usury. These two types of stipulations, because they conflict with Sharia texts, do not fall within the scope of the rule "believers are bound by their conditions," but rather constitute exceptions to it. Consequently, the rule "believers are bound by their conditions," as a general juristic principle, provides the enforcement basis for valid stipulations and organizes the juristic institution of stipulations in terms of legitimacy and binding force. However, this rule is not absolute, and through the exception contained in the narration itself, namely "except for a condition that prohibits the lawful or permits the unlawful," invalid stipulations are excluded from its scope. This limitation reflects the juristic balance between contractual freedom and respect for Sharia limits in regulating legal relations.

### Examination of Jurists' Opinions on Suspended Ownership

In Imami jurisprudence, one of the fundamental issues concerning the effect of stipulations on the transfer of ownership is the question of suspended conveyance or, in other words, suspended ownership; that is, whether transfer of ownership may be suspended upon a future condition or event. Jurists' views on this issue are not uniform, and there is serious disagreement. To clarify the discussion, the dominant view of Imami jurists, which denies the possibility of suspension in ownership transfer, is first examined; then the opposing view, including that of Shaykh Ansari, is considered; and finally, an analysis is offered of the foundations and effects of the rule of suspended transfer in translative contracts. The dominant view of jurists such as Muhaqqiq Hilli, Allamah Hilli, the First Martyr, and the Second Martyr is based on the impossibility of suspension in transfer of ownership. Muhaqqiq Hilli states in *Shara'i al-Islam* that conveyance of ownership does not accept suspension because the contract must be unconditional and suspension conflicts with its nature (24). Allamah Hilli also states in *Qawa'id al-Ahkam* that suspended conveyance is invalid because the effect of the contract must arise immediately, not in the future (17). The Second Martyr, in his commentary on *Al-Lum'ah*, explicitly confirms this view and states that translative contracts do not accept suspension because what is created in them cannot be made dependent in its occurrence (25). On the other hand, some later jurists, including Shaykh Ansari in *Al-Makasib*, have adopted the opposite view. He believes that suspension in translative contracts is not problematic if it does not cause uncertainty in the declaration. By distinguishing between suspension in the declaration and suspension in what is created by the declaration, he argues that suspension in the created legal effect does not harm the contract, and the contract is invalid only if the suspension relates to the declaration itself (3). In other words, if the speaker says, "I sold this to

you if Zayd comes,” and has a serious intention to declare the contract, while the effect of conveyance is made dependent on the realization of a condition, this is not problematic in itself, because the suspension concerns the legal effect, not the declaration itself. Thus, in Shaykh Ansari’s view, there is no obstacle to ownership arising in a suspended manner, and upon realization of the condition, transfer of ownership occurs automatically.

In evaluating these two views, it may be said that the dominant view is based on the customary and substantive nature of traditional translative contracts, whereas Shaykh Ansari’s view takes account of the requirements of modern transactions and offers a more precise analysis of the nature of legal declaration. Moreover, accepting suspended ownership provides the foundation for many new legal institutions, including the retention of title clause, installment sale, leasing contracts, and financial transactions based on future conditions. If ownership were possible only in an unconditional and immediate form, many of these contractual forms would be deemed invalid or would require secondary interpretations. Analysis of the rule of suspended transfer or suspended conveyance shows that, contrary to the belief of some earlier jurists, suspension in ownership transfer is not necessarily invalid. Rather, one may distinguish between suspension in the declaration, which is invalid because of uncertainty in intention, and suspension in the legal effect, which makes the effect of the contract dependent upon a future event. Acceptance of suspended transfer in translative contracts is more consistent with the requirements of contemporary contracts and increases the possibility of harmonization with rational and international rules. Even some contemporary jurists, such as Imam Khomeini, have indirectly accepted the possibility of such a distinction, although in some cases they express doubt regarding the validity of suspended transfer (22).

In Iranian positive law, which is influenced by Imami jurisprudence, the principle is the need for certainty in contracts. Article 189 of the Civil Code states that a contract may be unconditional or conditional; an unconditional contract is one whose effect does not depend on another matter, otherwise it is conditional. However, by implicitly accepting conditional contracts, the legislature has made it possible for the effect of a contract to arise upon realization of a condition. From a set of provisions of the Civil Code, such as Articles 10 and 454, it may also be concluded that suspension in the effects of contracts has been accepted, and therefore the retention of title clause may be justified on the basis of conditional transfer of ownership. Thus, considering the totality of juristic opinions, doctrinal analyses, and practical requirements, it may be said that suspension in ownership transfer is acceptable when it does not harm the declaration itself and may serve as a lawful and rational basis for accepting the retention of title clause in modern transactions.

### **The Retention of Title Clause from the Perspective of Specific Rules**

From the perspective of the specific rules of the jurisprudence of transactions, particularly the rules governing contractual stipulations, the retention of title clause may be examined under various frameworks, including stipulation of guarantee, stipulation of rescission, stipulation of option, and stipulation of result. Each of these frameworks has different legal effects and helps clarify the juristic and legal position of this clause. Under the framework of stipulation of guarantee, if the retention of title clause is drafted in such a way that the seller remains responsible for loss or damage to the subject matter until full payment of the price, it may be regarded as a stipulation containing a specific enforcement mechanism for non-payment of the price. This analysis is mainly seen in Sunni jurisprudence and some Western legal schools, in which ownership of the goods is transferred to the buyer but the risk of loss remains with the seller. In Imami jurisprudence, this matter requires reflection, because if ownership is transferred, risk is also generally transferred to the buyer, unless a contrary stipulation is made; that

is, unless it is stipulated that liability remains with the seller. In this case, the retention of title clause may be treated as a stipulation of guarantee, and its validity depends on the precise wording of the clause and its effect on conveyance of ownership (23, 26).

Under the framework of stipulation of rescission, one may say that the seller stipulates that if all installments are not paid by the due date, the seller will have the right to rescind the transaction. In this analysis, ownership is transferred from the outset, but by exercising the stipulation of rescission, the seller may dissolve the contract and recover the subject matter. Although this interpretation is to some extent compatible with the structure of installment transactions, it differs from the spirit of the retention of title clause, which is based on suspending ownership until full payment. In this case, it is also necessary to examine carefully rescission and its effects on restitution of the subject matter, loss, and benefits (11).

Under the framework of stipulation of option, similar to stipulation of rescission, the seller may reserve for itself an option of rescission until the end of the installment payment period or until the relevant conditions are fulfilled. The stipulated option here allows the seller to rescind the contract if the stipulation is not performed. Unlike the retention of title clause, which prevents definitive transfer of ownership at the beginning, this framework transfers ownership from the outset but gives the seller the possibility of reversing it. From a juristic perspective, this interpretation is consistent with the foundations of the rules governing stipulated options (3).

From the perspective of the rules governing types of stipulations, the retention of title clause more closely resembles a stipulation of result. In a stipulation of result, the parties agree that realization of a legal effect, such as transfer of ownership, will depend on the realization of a specific future condition. Under this framework, what is agreed upon is the realization of a specific legal result itself, not merely an undertaking to perform it. Therefore, if it is stated, "I sell this property to you on condition that you become its owner after paying the final installment," the parties have agreed on a future result, namely transfer of ownership. In Imami jurisprudence, the validity of stipulation of result is debated; the dominant view accepts it but makes it dependent on customary acceptance and possibility of occurrence in the external legal sphere. If the intended result is capable of realization, there is no obstacle to its validity (2). However, if the retention of title clause is drafted in such a way that it merely describes a quality of the contract or of the subject matter, for example, "this property is sold in such a way that you will become owner if you pay the installments," it may be considered a stipulation of quality. In this case, instead of making transfer of ownership conditional, the stipulation identifies a characteristic of the contract, such as a particular timing for conveyance, or a characteristic of the subject matter, such as transferability in the future. Nevertheless, in many cases, such interpretations create ambiguity in the contract and undermine the parties' intention. Ultimately, it must be said that, upon closer analysis and comparison with specific juristic rules, the retention of title clause is more consistent with the framework of a suspended stipulation of result, especially if ownership does not arise until the condition, namely full payment of the price, is fulfilled. This analysis is not only consistent with the rules of Imami jurisprudence concerning suspension in the legal effect, but is also compatible with the requirements of modern transactions such as installment sale, leasing, and long-term installment automobile purchases.

### **Analysis of the Retention of Title Clause in Iranian Positive Law**

One of the most important foundations for accepting the retention of title clause in Iranian law is Article 10 of the Civil Code, which addresses the principle of autonomy of will and provides that private contracts are valid between those who conclude them, provided that they are not expressly contrary to law. This article emphasizes the parties'

intention and agreement; accordingly, if a retention of title clause is included, under which transfer of ownership is made conditional upon full payment of the price or installments, such a clause will be lawful and enforceable unless it conflicts with mandatory rules or public order. This principle, especially in the contemporary legal system that emphasizes contractual flexibility, plays an important role in accepting modern institutions such as installment sale and leasing (26). Article 219 of the Civil Code further provides that contracts concluded in accordance with law are binding on the contracting parties and their successors unless rescinded by mutual consent or for a legal cause. In addition to emphasizing the obligation to fulfill contracts, this article implicitly requires compliance with contractual stipulations. If the retention of title clause is expressly included in a contract of sale as a contractual stipulation, it will be binding under this article. In fact, as long as this clause is not contrary to mandatory laws, it is considered part of the contractual obligations and is enforceable (5).

The main source of doubt concerning the retention of title clause is Article 362 of the Civil Code. The first paragraph of this article provides that sale makes the buyer owner of the subject matter and the seller owner of the price. This provision has been interpreted to mean that sale is an immediate translative contract and that ownership is transferred as soon as offer and acceptance are completed. Therefore, the possibility of suspending conveyance, meaning transfer of ownership conditional upon payment of installments, has been criticized. This traditional view, arising from narrow interpretations of Article 362, is considered one of the most important theoretical obstacles to accepting the retention of title clause (27). However, this interpretation is not fully consistent with customary realities and the requirements of modern contracts. Analytically, one must distinguish between suspension in the declaration and suspension in the effect. Imami jurisprudence and many jurists consider suspension in the declaration of the contract, meaning suspension of the conclusion of the contract itself, invalid, but they have accepted suspension in the effect of the contract, such as conveyance, where there is an implied or express stipulation. Accordingly, if the parties agree in a sale contract that ownership of the subject matter will be transferred to the buyer only after full payment of the price, this is suspension in the effect, not in the declaration, and it can be reconciled with Article 362 (28). Moreover, the principle of good faith and the rule of *pacta sunt servanda* in contract law should be mentioned, as they, alongside the above provisions, provide a basis for accepting the retention of title clause. Today, in many legal systems, such as German and French law, and even in international instruments such as the UNIDROIT Principles, the retention of title clause is recognized as an important instrument for securing the seller's claims in installment sales and long-term contracts. In these systems, this clause is treated as a form of real security or an instrument for securing performance of obligations. Some Iranian writers, taking these developments into account, have also supported the possibility of including such a clause under the principle of freedom of contract (7).

Another relevant provision is Article 401 of the Civil Code concerning stipulated options. In some contracts, the retention of title clause may be drafted in such a way that the seller is granted an option of rescission until full payment of the installments, or a stipulation may provide for gradual transfer of ownership with each installment payment. Article 233 of the Civil Code, which specifies invalid stipulations and stipulations invalidating the contract, also shows that only certain stipulations, such as those contrary to the essential nature of the contract or unlawful stipulations, cause invalidity of the clause, and the retention of title clause falls outside these categories. Regarding the possibility of transfer of ownership in a suspended form, Imami jurists have different views. The majority, such as Muhaqqiq Hilli and Allamah Hilli, have considered suspension in conveyance invalid, but jurists such as Shaykh Ansari and some later scholars, by distinguishing between suspension in declaration and suspension in the legal effect, have accepted suspension of effect. This acceptance also paves the way for endorsing the retention of title

clause from a juristic perspective (3). In conclusion, although the retention of title clause is not provided for within the traditional forms of sale in the Iranian Civil Code, it can be accepted in Iranian positive law by relying on the principle of freedom of contract, the principle of the binding force of promises, and the distinction between suspension in effect and suspension in declaration. Provided that it is clearly and transparently included in the contract, it is not problematic from either a juristic or legal perspective and is in fact one of the efficient instruments for protecting sellers' rights in installment and high-risk transactions.

### Enforcement Challenges in Iranian Law

In the final juristic and legal assessment of the retention of title clause, the issue must be analyzed both in terms of conformity with the general principles of Imami jurisprudence and from the perspective of Iranian positive law. The retention of title clause, by virtue of which transfer of ownership of the subject matter remains suspended until full payment of the price, is a stipulation that has found extensive application in contemporary contracts, especially installment sales and leasing contracts.

From a juristic perspective, the presumption is the legitimacy of contractual stipulations so long as they do not conflict with the rule that believers are bound by their conditions and do not fall outside the scope of valid stipulations. Therefore, if the retention of title clause is neither contrary to the essential nature of the contract nor unlawful or uncertain, it must be regarded as enforceable and binding (2). Where the sale has been concluded but transfer of ownership is made conditional upon full payment of the price, if the clause is included as a contractual stipulation and the suspension relates only to the effects of the contract rather than its declaration, according to the dominant view of contemporary jurists such as Shaykh Ansari, no objection can be raised against it (3).

From the perspective of Iranian positive law, especially by relying on autonomy of will under Article 10 of the Civil Code and the binding force of contracts under Article 219, the retention of title clause is acceptable as a contractual stipulation. Unlike some legal systems, the Iranian Civil Code does not expressly accept or reject such a clause, but through a broad interpretation of the provisions relating to contracts and contractual stipulations, the legitimacy and enforceability of the retention of title clause can be established. Article 362, which states the effects of the contract of sale, is not an absolute obstacle to this clause, because it speaks in general terms and without considering contractual conditions, and custom and the parties' agreement may alter the effects of the contract (26). Nevertheless, in enforcement, the retention of title clause faces challenges. For example, in many installment sale contracts in which transfer of ownership remains suspended until full payment of installments, if the property is attached by third parties or by the buyer's creditors, the seller may not easily benefit from the clause. In Iranian law, judicial practice has not yet provided a uniform interpretation of this clause. Some courts, relying on the apparent form of the contract and the registration of title, consider ownership to have been transferred, while others regard the clause as enforceable and as preventing transfer (7). Also, from the perspective of third-party rights, an important question arises: if the buyer, without full payment of installments, transfers the property subject to the clause to another person, or if that property is attached, to what extent will the seller's rights be preserved? In such cases, the retention of title clause must be expressly stated in the contract and preferably in an official document so that it can be invoked against third parties. Otherwise, the seller may in practice lack an ownership right that can be defended. On the other hand, in the absence of a clear system for registering contracts containing retention of title clauses, unlike legal systems such as Germany and France, enforcement of this clause against third parties involves risks. The proposed solution to address these challenges is to provide stronger contractual enforcement

mechanisms, prepare official documents, and create a system for registering retention of title clauses with registration authorities so that the seller's priority is preserved in conflicts with third parties. Ultimately, it may be concluded that, from a juristic perspective, the retention of title clause is lawful and enforceable as a contractual stipulation and is compatible with principles such as "believers are bound by their conditions," fulfillment of contracts, and the binding force of agreements, provided that it does not conflict with the nature of the contract. In Iranian law as well, despite the silence of the Civil Code, this clause is acceptable through modern interpretations of freedom of will, but in terms of enforcement, practical and legal measures must be adopted to preserve its effects against third parties.

## Conclusion

This study analyzed the retention of title clause from juristic and legal perspectives, and the findings show that this type of clause is valid and acceptable in many legal systems from both juristic and legal standpoints. The retention of title clause is, in fact, a type of agreement in translative contracts that allows the parties to keep ownership of the property with the seller or financing provider until specific conditions, such as full payment of the price, are fulfilled. This type of clause is also acceptable in Iranian law, especially in installment sale and leasing contracts, and the country's judicial and legal authorities should use it as a valid and useful instrument in drafting contracts.

From a juristic perspective, the retention of title clause is entirely lawful and acceptable in light of the rule that believers are bound by their conditions and other juristic rules such as the obligation to fulfill contracts. According to these rules, a stipulation that relates to the parties' agreement and falls within the framework of Sharia principles is valid. This type of clause is in fact useful for protecting the parties' rights and preventing the loss of ownership rights, especially where payments are made in installments. In effect, the retention of title clause provides assurance that until the other party fully performs its obligations, ownership of the property will remain reserved and the seller may retain control over it.

In Iranian law as well, given the principle of freedom of contract, which is clearly stated in Article 10 of the Civil Code, the parties to a contract may include any stipulation in their contracts that is not contrary to law or public order. Accordingly, the retention of title clause is valid and enforceable in Iranian law as a contractual stipulation, especially in leasing and installment sale contracts in which transfer of ownership occurs gradually and in different stages. Article 219 of the Iranian Civil Code also emphasizes compliance with contractual stipulations; therefore, any stipulation accepted by the parties to the contract will be valid, provided that it does not conflict with the law.

Nevertheless, the retention of title clause faces practical challenges. One of the main challenges is the difficulty of its proper enforcement. In many cases, especially in installment sale contracts, failure to register and draft this clause accurately in the contract may create problems in proving ownership and the parties' rights in the future. Particularly in the event of disputes, the parties may be unable to prove their rights properly, which may lead to complex litigation. Therefore, it appears necessary to provide rules for the official registration of this type of stipulation with the country's registration authorities in order to prevent such problems.

Another enforcement challenge concerning the retention of title clause is its interaction with the rights of third parties. If the property subject to the transaction is attached or seized by third parties, proving retained ownership for the buyer or seller may be difficult. Under these circumstances, if the retention of title clause has not been officially and legally registered with registration authorities, the parties may face serious legal problems and their

rights may be placed at risk. Therefore, developing a clear judicial practice and registering this type of clause with legal and registration authorities appear necessary to resolve this problem. Ultimately, to remove enforcement problems and facilitate proper implementation of the retention of title clause, it is recommended that the country's judicial and legal authorities develop procedures for registering and monitoring this type of stipulation. In addition, holding training courses for lawyers, judges, and other legal professionals on the use of these stipulations can help improve awareness and proper implementation. Moreover, comparative study of advanced legal systems, particularly French and German law, can offer innovative approaches to implementing the retention of title clause in Iranian law and make the country's laws more up to date and efficient.

From a legal perspective, one important point in accepting the retention of title clause is the correct interpretation of this clause by courts. Judges should use clear and uniform interpretations of the retention of title clause in order to prevent disputes and divergent interpretations. It is also necessary for installment sale contracts, especially with respect to this type of clause, to be drafted precisely so that the rights of the parties are properly protected.

Another recommendation is that, in the future, the rules governing installment sale and leasing contracts should be reviewed and updated in light of current economic and social changes. Such revisions can help regulate contractual stipulations more accurately, address existing challenges, and facilitate the practical implementation of these stipulations. Overall, the retention of title clause is a useful legal instrument that, if juristic and legal principles are observed, can effectively protect the rights of contractual parties. Nevertheless, to prevent enforcement and legal problems, reforms and improvements in enforcement and supervisory procedures are needed in this field.

To improve the implementation of the retention of title clause, it is first recommended that the laws and regulations governing installment sale and similar contracts be reviewed and that independent provisions be enacted to regulate and formally validate the retention of title clause in order to prevent later ambiguities and disputes. Second, official and systemic registration of such clauses should be made possible through notarial offices or electronic transaction systems so that they can be invoked and defended against third parties. Third, it is recommended that the judiciary and legal education institutions hold specialized training sessions and workshops for judges, lawyers, and notaries on the validity, scope, and method of enforcing this clause, so that uniform practice and precision in dealing with this important legal institution are increased.

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### **Authors' Contributions**

All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

### **Ethical Considerations**

All ethical principles were adhered in conducting and writing this article.

## Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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