



## Comparative Study of the Effects of Contract Rescission in Iranian Civil Law and Comparative Law

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### Article info

Received: 02.11.2025

Accepted: 11.12.2025

Available Online: 12.12.2025

Checked for Plagiarism: Yes

### Keywords:

Contract rescission, Iranian civil law, comparative law, CISG, restitution, contract termination

### ABSTRACT

Contract rescission serves as a crucial legal mechanism for terminating contractual obligations, ensuring fairness, and maintaining the balance of rights between parties. This study aims to examine the effects of contract rescission in Iranian civil law and to compare them with those in comparative law, analyzing the legal aspects, conditions for rescission, and its consequences. In Iranian law, contract rescission is generally possible either legally or contractually, and its effects mainly include the termination of future obligations, restitution to the prior state, and compensation for damages resulting from contractual breaches. In comparative legal systems, particularly in French and English law, similar concepts exist; however, notable differences can be observed regarding restitution, the extent of damage compensation, and the role of the parties' will. The research employs a descriptive-analytical method, relying on legal texts, doctrinal analysis, and judicial precedents to identify points of convergence and divergence among various legal systems. The findings indicate that while the fundamental principles of contract rescission are largely similar across jurisdictions, differences exist in the execution of rescission and its impact on complex economic contracts. Moreover, comparative law generally offers greater flexibility in determining the effects of rescission and compensating associated damages, whereas Iranian law provides a more defined and limited legal framework. This study concludes with recommendations to enhance the regulation of contract rescission in Iranian law, offering practical guidance for legal practitioners, judges, and contract drafters.

### Introduction

Contracts are foundational to private legal relations, providing certainty and predictability in commercial and civil transactions. Nevertheless, circumstances often arise where contractual obligations cannot or should not be performed, necessitating a legal mechanism to terminate the contract. In Iranian civil law, contract rescission (faskh) and automatic termination (infisakh) serve as primary instruments for such purposes, grounded in both statutory provisions and Islamic jurisprudence. However, ambiguities in the law and reliance on judicial interpretation create variability in outcomes, particularly concerning restitution and damages [1].

In contrast, international frameworks, such as the 1980 Vienna Convention (CISG), and civil law jurisdictions in Europe provide structured mechanisms for contract termination and clearly define the consequences of rescission, including restitution and compensation. This article aims to explore the legal effects of contract rescission under Iranian law and compare them with principles in international and comparative law, identifying strengths, weaknesses, and opportunities for reform [2].

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**Literature Review**

Contract rescission, as a legal remedy, has attracted significant attention in both domestic and international legal scholarship. In Iranian civil law, rescission (*faskh*) is deeply rooted in the Civil Code and influenced by Islamic jurisprudence. Scholars such as Sharifi (2022) [3] have emphasized that the variety of *khiyar* options and mutual consent mechanisms offer a flexible framework but also create legal uncertainty due to fragmented statutory provisions and reliance on judicial interpretations. The practical implication of this ambiguity is that parties often face unpredictable outcomes regarding restitution and damages [4].

Several studies have focused on *khiyar* rights as a central aspect of Iranian rescission. Khosravi & Rezaei (2023) analyzed the application of *khiyar al-‘ayb* (defective object) and *khiyar al-ghubn* (inequitable price) [5] in contractual disputes, highlighting that courts often rely on interpretative methods drawn from jurisprudence rather than clear statutory guidance. This observation aligns with the conclusion of Nayyef et al. (2025), who examined automatic termination (*infisakh*) in Iran, Iraq, and under CISG, noting that Iranian practice lacks systematic codification compared to international standards [6].

Comparative studies of rescission in civil law and common law systems reveal significant differences in approach. In civil law jurisdictions, such as France and Germany, rescission is typically allowed in cases of non-performance or significant change in circumstances (hardship), and statutes clearly define restitution and compensation mechanisms (Franco, 2017). In contrast, common law systems, including English law, permit rescission primarily for misrepresentation, fraud, or duress, with remedies relying on equitable principles (DiMatteo, 2015). These studies suggest that international legal frameworks tend to offer more predictability and codified guidance than Iranian law [7].

International conventions, particularly the United Nations Convention on Contracts for the International Sale of Goods (CISG, 1980) [8], provide a robust comparative reference. Article 72 of the CISG allows contract termination in cases of fundamental breach, requiring notice and offering remedies including restitution and damages. Kessedjian (2018) emphasizes that such codified rules reduce uncertainty and protect commercial relationships, which is particularly relevant for cross-border trade. Several scholars, including Civilica (2024), have argued that adopting similar principles in Iranian law could enhance legal certainty and harmonize domestic practice with international standards [9].

Recent empirical research has also explored judicial application of rescission in Iran. Studies indicate that courts often interpret rescission provisions inconsistently, particularly regarding restitution and the timing of contract termination (Sharifi, 2022; Khosravi & Rezaei, 2023). This inconsistency reinforces the need for legislative reform to provide clear, unified rules for rescission. Comparative analyses suggest that codification of anticipatory termination, restitution, and compensation, drawing on international law and civil law systems, could resolve these gaps and improve legal predictability. In summary, the literature demonstrates a consensus on several points [10]: (1) Iranian civil law provides multiple mechanisms for rescission but suffers from fragmented rules and inconsistent judicial interpretation [11-13]; (2) civil law and international frameworks, such as CISG, offer more structured remedies with clear rules on restitution and damages [14]; and (3) comparative studies highlight the potential for harmonization and reform in Iranian law to align with international best practices. The current research contributes by systematically comparing the effects of contract rescission in Iranian and comparative law, identifying gaps, and proposing potential pathways for reform [15].

**Table 1:** Summary of Selected Studies on Contract Rescission

Author(s)	Year	Jurisdiction / Focus	Key Findings	Research Method	Sample / Data	Relevance to Current Study
Sharifi, H.	2022	Iran	Multiple <i>khiyar</i> options; inconsistent judicial outcomes	Doctrinal analysis	Iranian case law	Highlights legal uncertainty in rescission effects
Khosravi & Rezaei	2023	Iran	Application of <i>khiyar al-‘ayb</i> and <i>khiyar al-ghubn</i>	Case analysis	50 court cases	Demonstrates practical implications of rescission options
Nayyef et al.	2025	Iran, Iraq, CISG	Comparison of automatic termination and rescission	Comparative study	Legal texts and case studies	Shows Iran’s fragmented codification vs. international standards

Franco, P.	2017	France, Germany	Statutory rescission and compensation	Comparative legal analysis	Statutory review	Provides civil law reference for structured rescission rules
DiMatteo, L. A.	2015	Common Law	Rescission for misrepresentation/fraud	Doctrinal study	Literature review	Equitable remedies highlight differences from Iran
Kessedjian, C.	2018	CISG / International	Fundamental breach & termination	Doctrinal and practical	Case commentaries	Offers codified framework for cross-border rescission
Civilica Journal	2024	Iran / International	Comparative outcomes under CISG & Iran	Comparative legal study	Legal articles	Recommends harmonization with international law
Nayyef, M. K.	2025	Iran / International	Automatic termination (infisakh) analysis	Comparative legal study	Statutory and jurisprudential review	Highlights gaps in Iranian law and suggests reforms

**Theoretical Framework and Key Concepts**

Contract rescission refers to the legal dissolution of a contract, resulting in the extinguishment of obligations. Key distinctions must be made between:

- ✓ Rescission (Faskh): Termination by party consent or statutory right, e.g., due to khiyar (option) in Iranian law.
- ✓ Automatic termination (Infisakh): Dissolution triggered by events defined by law, such as impossibility of performance, death, or force majeure.
- ✓ Nullity / invalidity: Retroactive voiding of the contract, typically for defects at formation.

In comparative law, terms such as rescission, avoidance, termination for fundamental breach, or cancellation are commonly used, with remedies including restitution, damages, or both [16].

**Contract Rescission in Iranian Civil Law**

**Legal Basis:** Iranian Civil Code provides multiple grounds for rescission:

- ✓ Khiyar (option) rights: Includes khiyar al-‘ayb (defective object), khiyar al-ghubn (inequitable price), khiyar al-majlis (immediate withdrawal), and khiyar al-ta’khir thaman (delay in payment).
- ✓ Mutual consent (Iqal/rescission by agreement): Parties may terminate a contract through mutual agreement [17].
- ✓ Other statutory provisions: Include rescission for mistake, fraud, or coercion.

**Legal Effects**

- ✓ Extinguishment of obligations: Primary contractual obligations cease.
- ✓ Restitution: Parties return benefits received to the extent possible.

- ✓ Compensation: Liability for damages may arise, depending on the type of rescission and judicial interpretation [18].

**Challenges in Iranian Law**

- ✓ Fragmented statutory framework; absence of unified rules for restitution and damages across all contract types.
- ✓ Limited recognition of anticipatory breach (preemptive termination).
- ✓ Reliance on jurisprudence and doctrine creates inconsistencies in outcomes.

**Comparative and International Law Perspectives**

**United Nations CISG (1980):**

- ✓ Article 72 and related provisions allow termination in cases of fundamental breach.
- ✓ Requires notice to the breaching party, ensuring fairness [19].
- ✓ Remedies include restitution and damages.

**European Civil Law Systems**

- ✓ France, Germany, and other civil law jurisdictions provide statutory grounds for rescission in cases of delay, non-performance, or significant hardship.
- ✓ Remedies are clearly codified, often combining termination and compensation, emphasizing predictability.

**Common Law Systems**

- ✓ English and other common law jurisdictions allow rescission for misrepresentation, fraud, duress, or breach of condition [20].

**Table 2.** Comparative Analysis

Aspect	Iranian Civil Law	Comparative / International Law
Grounds for rescission	Multiple khiyar, mutual consent, fraud, mistake	Fundamental breach, non-performance, misrepresentation, hardship
Restitution	Practiced, but statutory rules are fragmented	Clearly codified; emphasis on restitutio in integrum
Damages	Possible depending on type of rescission	Typically available alongside rescission; predictable outcomes
Anticipatory breach	Limited recognition	Recognized (CISG, civil law, common law)
Legal certainty	Moderate; relies on judicial interpretation	High; codified frameworks ensure predictability

**Challenges and Recommendations for Iranian Law**

- ✓ Lack of comprehensive and unified statutory provisions for rescission effects.
- ✓ Ambiguity in restitution and damage obligations [21].
- ✓ Recommendations:
  - Codify comprehensive rules on rescission, including anticipatory termination.
  - Integrate structured restitution and damages rules.
  - Harmonize domestic law with international standards (CISG) for cross-border commerce.

**Discussion**

Contract rescission is a crucial mechanism in contract law that serves to balance the interests of parties when performance becomes impractical, illegal, or inequitable. In the context of Iranian civil law, rescission (*faskh*) is governed by provisions embedded in the Civil Code, primarily influenced by Islamic jurisprudence (*fiqh*). Iranian law recognizes various forms of rescission, including those arising from specific *khiyar* rights (e.g., *khiyar al-‘ayb* for defective goods, *khiyar al-ghubn* for inequitable price) and mutual consent (*iqal*). While these provisions provide flexibility, they also create a fragmented legal framework that often relies heavily on judicial interpretation, resulting in unpredictability regarding restitution, compensation, and the timing of contract termination [22].

Empirical analyses of Iranian case law (Khosravi & Rezaei, 2023; Sharifi, 2022) reveal significant inconsistencies in the application of rescission. Courts may interpret identical legal provisions differently, especially concerning restitution the process by which parties return benefits received under the contract. For instance, in cases involving *khiyar al-‘ayb*, some courts order full restitution, while others may allow partial retention under equitable principles. This inconsistency can undermine the predictability of legal outcomes and reduce confidence in contractual enforcement. Moreover, anticipatory or preemptive termination a

well-established concept in international commercial law is not explicitly codified in Iranian law, which limits parties’ ability to mitigate damages or terminate contracts before significant breach occurs.

Comparative law perspectives, particularly from civil law jurisdictions and international conventions, offer valuable insights for evaluating these challenges. In civil law countries such as France and Germany, contract rescission is generally allowed in cases of non-performance, mistake, fraud, or significant changes in circumstances (*hardship*). Legal provisions in these systems are codified, providing clear guidance on both termination procedures and remedies, including restitution and compensation. For example, French civil code articles and German *Bürgerliches Gesetzbuch* (BGB) ensure that rescission entails return of received benefits and the possibility of damages for consequential losses. This structured approach increases predictability and minimizes reliance on discretionary judicial interpretation [23].

International frameworks, particularly the United Nations convention on contracts for the International Sale of Goods (CISG, 1980), further demonstrate the benefits of codification. CISG Article 72 establishes the right to terminate a contract upon a fundamental breach, requiring notice and providing remedies such as restitution and damages. This framework not only clarifies the conditions under which termination is valid but also balances the parties’ interests by providing a structured path for compensation. The CISG model exemplifies an approach that enhances commercial certainty and is particularly suited to cross-border trade, where predictability and uniformity are paramount [24].

A comparative analysis highlights several notable differences between Iranian civil law and these international frameworks. First, the codification of termination rights in civil law and CISG contrasts sharply with Iran’s reliance on jurisprudence and the fragmented *khiyar* system. While Iranian law offers multiple mechanisms for rescission, the lack of unified procedural and substantive rules complicates enforcement. Second, the absence of explicit anticipatory termination rights in Iran restricts parties’ ability to manage risk efficiently, whereas

CISG and civil law systems provide mechanisms to terminate contracts proactively when fundamental breach or non-performance becomes evident. Third, the approach to restitution differs: Iranian courts may inconsistently apply restitution principles, whereas civil law and CISG frameworks ensure systematic return of benefits, creating a more equitable balance between parties [25].

Despite these differences, Iranian law does exhibit strengths that can inform broader comparative discussions. The flexibility of *khiyar* rights allows for nuanced solutions tailored to the circumstances of specific disputes. For instance, *khiyar al-ghubn* empowers parties to address cases where the contractual price is significantly inequitable, reflecting a sensitivity to fairness that is less emphasized in rigid statutory systems. Additionally, the possibility of mutual consent termination (*iqal*) aligns with international norms favoring autonomy and voluntary settlement. These features demonstrate that Iranian law possesses adaptable tools, but their efficacy is often undermined by inconsistent application and lack of codified procedures.

The analysis also reveals several practical implications for legal reform in Iran. First, codifying anticipatory or preemptive termination rights would allow parties to terminate contracts before irreparable damage occurs, aligning domestic practice with international norms. Second, establishing a unified statutory framework for restitution and compensation would reduce judicial discretion and increase predictability, fostering greater confidence in contractual enforcement. Third, harmonizing domestic rules with international conventions, particularly CISG, could facilitate cross-border trade and improve Iran's integration into global commercial networks. By learning from comparative law, Iran could retain the fairness-oriented elements of its *khiyar* system while achieving greater clarity and predictability in contractual remedies.

Another critical point involves the treatment of damages and compensation. While Iranian law allows for compensation in theory, the lack of a consistent framework for measuring losses often results in unpredictability. Comparative systems, particularly CISG, combine rescission with clearly defined compensatory remedies, providing parties with an expected outcome in financial terms. Adopting similar principles in Iran could reduce litigation costs and encourage settlement, ultimately supporting economic efficiency [26].

From a theoretical perspective, this discussion underscores the value of a comparative approach in legal scholarship. By examining Iranian civil law alongside civil law jurisdictions and international frameworks, scholars and policymakers can identify gaps and propose targeted reforms. Comparative analysis not only highlights differences but also

reveals potential synergies, demonstrating how Iran's unique legal tradition can be harmonized with modern contractual practices without sacrificing its jurisprudential foundations [27].

In conclusion, the analytical review demonstrates that while Iranian civil law provides multiple avenues for contract rescission, its fragmented framework, reliance on judicial interpretation, and absence of anticipatory termination rights limit its effectiveness. Comparative law and international conventions provide structured remedies, predictable outcomes, and codified procedures that enhance fairness, security, and efficiency. Future reforms in Iran could focus on codifying anticipatory termination, standardizing restitution and compensation rules, and harmonizing domestic practice with international norms. Such reforms would strengthen legal certainty, protect contractual interests, and enhance Iran's participation in global commerce, while retaining the flexible and fairness-oriented features of the Iranian *khiyar* system [28].

### **Conclusion**

Contract rescission in Iranian civil law is a vital legal mechanism, yet its fragmented statutory framework and reliance on jurisprudence limit predictability and uniformity in outcomes. Comparative law systems, particularly CISG and European civil codes, offer structured and predictable remedies, combining rescission with restitution and compensation. Codifying comprehensive rules in Iranian law would enhance legal certainty, protect parties' interests, and facilitate both domestic and international transactions.

### **Disclosure Statement**

No potential conflict of interest reported by the authors.

### **Funding**

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

### **Authors' Contributions**

All authors contributed to data analysis, drafting, and revising of the paper and agreed to be responsible for all the aspects of this work.

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