The comparative study of deposit form Islamic religions’ point of view

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Abstract

A deposit is an issue that all of human beings are involved in it in a way and has been common since social life among people. The subject of deposit is derived from “ودع” meaning “leave” and in jurisprudence term, it is giving a property to someone in order to maintain free of charge and without any payment. Deposit is among allowed contracts and requires need and acceptance, requirement of applicant and acceptance by depository. Some jurists argue that actual need and acceptance is adequate and the others believe that just verbal need and acceptance is acceptable. There is disagreement among jurists in this case. One of the conditions for deposit contract parts is that they must be qualified in the terms of puberty, wisdom and authority in order to contract correctness. Depository commitments are among deposit contract effects while accepting the deposit is essential to maintain and he is responsible in the case of violation and wastage. One of the disagreed points in deposit is its denial for which the jurists have similar views. In the case of death or inaccessibility of each part, the deposit contract is terminated and the deposit is converted from possession deposit into legal deposit. There is agreement among jurists in this point.

Keywords: deposit, non-responsibility, violation and wastage, qualification and Islamic religions.
Introduction

Since the establishment of Islam till now, jurisprudence has had a useful and valuable role in the intellectual and developmental process of Islamic community. Considering that Islam involves the most complete rules and orders and these rules are the best guide for directing human beings towards high humane levels and respond to all needs and physical and spiritual requirements, perceiving these principles is so difficult and also is not possible for everyone. Thus, these principles should be analyzed by great jurists in order to ease them to ordinary people. Historically, adjustment and deduction of jurists from texts and books about jurisprudential issues have been different and the last and contemporary jurists have had more comprehensive knowledge about religious texts rather than ancients. Deduction and interpretation in religious issues is as a task and duty which has been given by prophets. The jobs and positions also are considered god deposit in the hands of authorities. Also the honorable tradition of Prophet Muhammad has explained deposit and depository in detail and the great jurists have expanded the range of these principles by following, analyzing and explaining the quadratic jurisprudence sources and following Shiite dynamic law. The legislator has established the principles related to deposit in Iranian civil code.

Deposit:

Deposit is a contract in which a person is a deputy for protecting a property or has a contract which its effect is replacing other people for protecting his own properties (Helli, 2009: 114).

According to Hanifeh, "bailment means deposit and includes: a person determines another one to protect his own property explicitly or implicitly. For example, take this property and maintain it (explicitly) or one finds a good and takes it, that property is a deposit by him (implicitly). So that if he loses that, he will be responsible. However, a deposit by the concept of deposited thing is the one which is given to a trustworthy person in order to maintain that. (Alzahili, 1997: 27).

According to Malikiyah, "a deposit is a contract in which a person is replaced for protecting a property by its owner (same: 704).

Deposit characteristics:

One of its features is that, it is a bilateral contract which is not realized by depositor, further the acceptance and will of depository or trustee is essential Bariko, 2010: 259).
There is conflict that if a deposit is unilateral or bilateral contract, most Shia jurists consider that as bilateral contract (Tabatabaie, 1998: 410). According to Shia scholars and jurists, the terms of deposit are not restricted to special terms and this contract could be conducted by all phrases, explicitly or implicitly and this suggests permissibility of this contract (Ameli, 2005: 78; Helli, 1986 : 129 ). In Hanifa School, a deposit has one base and it is a requirement and an agreement, since the aim is to deposit. It is a contract and the base by which a deposit is realized. However other than requirement and accept, there are no subjects in its nature, but they are conditions with no basis (Aljaziri, 1998: 250).

But, Malikiya argues that there is no need to verbal type. They believe that when a person expose his good to another one and the other side is silent, it suggest requirement and accept of deposit and actually he has announced his satisfaction with deposit acceptance with his silence, otherwise he declares the rejection (Aljaziri, 1998: 251 ).

Shafi’I school argues that requirement should be verbal, either explicitly or implicitly. However, in accepting the condition, there is no the term of “be”, but just the action, receiving the property, is sufficient and also either requirement or acceptance is enough when it is verbal and there is no problem about “be” (Alzahili, 2007: 646).

Therefore, according to Shafi‘I, the requirement should be said verbally by depositor, explicitly or implicitly, but in accepting by depository, there is no need to words, but the act is enough and also accepting a word or an act by on part (depositor or depository) in the deposit is sufficient. So, if the depository says give me this property as deposit and the depositor gives it without any word, it is correct (Aljaazayeri, 1998: 250).

**Permissibility of deposit by jurists view**

A deposit is an allowed contract and does not create a binding commitment to continue legal relationship and whenever they want could cancel it (Bariko, 2010: 260).

Deposit is a contract which is allowed bilaterally and the terms implying it are not limited, since they are in a position which could be expressed explicitly or implicitly (Hosseini, 1998: 5; Tousi, 2009: 132).

According to article 611 of civil law, deposit contract is an allowed one and each part of contract could reject it. the requirement and permissibility of the contract are not necessities of the contract but are needs of contract construction (Kashani, 2010: 62). However, the condition
during the deposit contract could not change from permissible contract to required contract but after failing the conditions the parts of contract are canceled. In this case, if the depository returns the property the owner doesn’t accept it. The owner trust converts to legal trust (Novin, 2000: 56).

Gratuity of deposit:

A deposit is a free contract; however, the exchange condition against deposit has no conflict with free deposit. As offering is an unredeemed or free contract and exchange condition in offering doesn't change its nature and does not convert it to unredeemed contract. Sometimes, it is observed that despite freeness of deposit, the depository or property receiver takes some money or wage once or per month (like trust fund office). When a depositor makes an exchange condition, it is a secondary one (subdominant) and is not like selling or rent in which two major commitments are set against each other. Trust fund in the banks is neither things' rent nor people rent, since the mentioned contracts are exchanged ones, whereas a deposit is generally a free and gratuitous contract and when the bank receives some payment per month or annually, it is because of some services which are given for maintaining the given property. Clearly, the «maintenance” cost of every property is by the owner (Novin, 2000 b: 57).

If the deposit condition is changed, it is considered rent, since receiving something for protecting the goods is not considered a deposit. However its gratuity has no conflict with exchange condition and this feature is for its domination, since a trustee, generally maintains the property free in charge. Therefore, when an exchange contract is conducted, like storage agreement, parking or trust fund which are done for protecting the property, they have no conflict with deposit contract (Bariko, 2010 : 260).

Validity of deposit contract:

According to paragraph 2 of civil code which is among basic requirements of transactions, the parts of deposit contract must be qualified (Novin, 2000: 54).

For validity of deposit contract, the contract parts must be mature, since a depositor also gives its work tool to the depository freely or payment by giving the property to him, so it is required him to be mature. In addition, by obtaining deposited property, the depository becomes proprietor practically which there is need to be mature ( Bariko, 2010 : 261 ). If an incapable person gives a property as deposit, this contract won’t be valid and the depository will be responsible towards the property. In both depositor and depository, maturity and wisdom is valid, therefore, giving and receiving a deposit from a child and crazy one is not valid either from their
own property or from the others who are perfect and even using the property which is deposit is not correct and if someone takes some things from them is responsible and his responsibility is not removed, except it is returned to their saints. So, if they return the property to them, they are responsible (Mousavi Hamedani, 2008: 192).

If an unqualified man confides his property to another one, the depository will have all related responsibilities about valid deposit and the protector of immature children could want him to do these commitments. According to Hanifa, a depositor must be auditor and the depository must be responsible i.e. wise and mature (Khavoji, 2009: 126). Malikiya argues that there is a principle in deposit contract according to which, both parts should be responsible and also have legal merit (Gharbani, 1999: 705). Shafi’I argues that a depositor and depository must be wise and mature and not be considered as stupid ones and also should be qualified for possession (Alzahil, 2007: 344). If a property is possessed by a child or a crazy person and that good is lost by violation and wastage, the child and insane is not responsible, since they have no responsibility for maintaining them (Alsharabini, 2003: 81).

According to Hanbali, a depositor and a depository, both should be ones who are capable to possess, i.e. wise and mature and are not insane. The same conditions which are considered in attorney including maturity, growth and wisdom exist also in deposit (Aljaziri, 1998: 252).

**The effects of deposit contract:**

It is adjusted from deposit contract that it is a covenant contract according to which a depository is committed to protect a property which has been given to him free of charge. Since a deposit is an allowed contract, the depositor and depository are able to cancel the contract whenever they want. As a result, whenever the depositor demands his property, the depository must return the maintained property.

**Hanife view:**

A depository is responsible for maintenance of the property; since it is required that the property is maintained. If the depositor determines a place for maintaining the property and this practice is useful to more protection, the depository should act according to that, unless he is responsible and if this place determination has no use, it won’t be enforceable (Alsaghreji, 2000: 35). And if a depositor determines a certain place for maintaining the property, it will be enforceable (Aljaziri, 1998: 358).
Shafi’i: if a depositor that determines a certain place for maintaining the property. The depository will follow this determination and maintain the property there (Alzahili, 2007: 648)

Hanbali: if a depositor determines a certain place for property and there is restriction for transferring into other place, it is enforceable and if it is transferred into other place, he will be responsible although the other place is safer. However, if it is not prevented, there is conflict among Hanbali jurists about responsibility of the depository in transferring into equal or better place than determined one (Qasemzade, 2011: 84).

**Necessity of deposit return by demanding the owner:**

Returning the property is among major commitments of trustee which follows general fulfill the promise. Refunding the property is necessary and aversion is a taboo and the reasons for reject include:

**The book:**

a) The verse: "'an a... يأمركم ان تودوا الامانات الى اهلها", God commands to return the properties into their owners.

b) The verse: "فان بعضكم ببعضاً فلیود اوتمن امانته " , i.e. “and if rely to each other (there is no need to hostage) and the person who has been considered trustee (has given something without any payment) should return the property on time. The first verse is general and includes owner and legal property. The second verse includes returning owner property.

Tradition: there are many stories about returning the trust to its owners in general and specific.

Special narrative: if the murderer of Imam Hussein gives his sword by which he has killed Imam Hussein to me as a trust, I must return it (Imam Zeinalabedin) (Tousi, 1993; 103)

Consensus:

Another reason for returning the trust is considered consensus by the jurists and some of them has been claimed consensus in their books (Alhalabi, 1982; 6; Tabatabaie, 1998: 430).

**Wisdom:**

The wisdom also commands to return the trust, so if a person acts against it, he has wronged and the oppression is obscene rationally and this is according to fundamental principle of correlation between religious decree and wisdom decree.

**Commitments of depositor:**

Paying the cost of maintenance and returning the property: a deposit contract does not create a commitment for the depositor, unless there is a reward condition in it. However, during the implementation of the contract, some commitments are created for the depositor towards
trustee who is responsible to do them. The main goal of owner is that, the trustee does not have any disadvantage for maintaining and returning the deposited property. Thus, the principle is that the detriments of the trustee should be compensated whether the loss source is merely the cost of maintenance and returning the property or the wrong of owner (Katouzian, 2007: 69).

A depositor is obliged to pay the costs of keeping and maintaining the deposited property. If the gains of each property belong to its owner, the cost of every property’s maintenance is determined by its owner and the damages provided to the property as either.

Sometimes, the deposited property has the side costs, like packing and transformation, insurance and so on. Example: when a depositor wants to deposit his ten rugs to a depository settled in another city, he should pay the side costs. The same is when cancellation of deposited contract and demanding or returning the deposited property, whether the depositor wants to cancel the deposit or the depository (Novin, 2000: 71).

**Guarantee and non-guarantee of depository**

The jurists argue that if the deposited property is lost, the depository or the same trustee won’t be responsible, except the reasons for compensation exist (Ameli, 2005: 232).

The causes of guarantee:

The jurists argue that the causes of guarantee are divided into two types of violation and wastage, however there are various interpretations which include seven subjects, but the term “failure“ to maintain the property involve all these issues which are divided into two types of violation and wastage (Ameli, 2005: 101).

The summary of compensation causes of depository:

1) Negligence of depository to return the deposit to its owner after demanding the property.
2) Giving the deposit to another one by the depository without any reason.
3) Travelling with the deposit without any reason.
4) Keeping the property in a place in which it finds a bad smell.
5) Not-feeding the deposited animal in a period in which the animal cannot tolerate.
6) Not-opening the cloth in order to take fresh air, if staying in a place for long term cause damage in that cloth.
7) Applying the deposit by the depository in inessential cases like wearing the cloth ....
8) Mixing the deposit with his own property or other properties by the depository (Masjedsaraie, 2011: 240).
Public jurists’ view about the exploitation from deposit:

Malekiye, Shafi’i and Hanbali say that: if a deposit is lost after application, the depository is responsible, though the loss is because of disasters. By his violation in application, the rule of deposit has been violated and the optimization has been expired (Alzahili, 2000: 46).

Hanife: one of the subjects causing guarantee is that the depository violates by seizing the property and using it. So, when he is given an animal and he rides it and then the animal is dead, he will be responsible since he has used it but if it is dead without using, the depository is not responsible (Aljziri, 1998: 256).

Malikiye: one of guarantee is that the depository uses the property. When a person gives an animal as deposit, and the trustee rides or uses it without its owner permission and when the animal is dead, he is responsible for it and should return it. If it returned healthy and afterward it is dead, there is no responsibility to him (Aljaziri, 1998: 258).

Shafi’i; one of the resons for guarantee is that the depository use the property, i.e. wearing a cloth when it is not correct or riding the animal when it is not appropriate (Aljaziri, 1998: 266).

Hanbali: one of the reasons causing the guarantee is that the depository benefits from the property such as when the deposit is an animal and he rides it for his interest but if he hires it there will be no responsibility, or if a cloth is given to him, he wears it for his own interest, he will be responsible (Aljaziri, 1998: 253).

Guarantees in deposit:

How the responsibility of a trustee could be justified? for proving the opposite if guarantee condition or deposit requirements and their difference with mentioned loan and rent , it has been said that in the rent , the main thing in the contract the ownership of interests by the renter and in the loan , giving permission in use is correct which generally the subject of rent and loan is given to the trustee to benefit from that but depositing in these kinds of contracts is secondary and the result is delivering the property which sometimes there is no need to that (i.e. when a person rent a car to another one and himself is a driver). On the contrary, in deposit, the contract provisions include determining a person to maintain the property and the depository should be dominant. In other words, domination of trustee on deposit is representative of the owner and it is required to deposit contract (Katouzian, 2005: 60).
Most jurists don’t know guarantees correct in deposit and know them opposite of trusts.

**Non-guarantees in deposit:**

According to the definition of deposit contract, the depository is a trustee and he is not responsible for any violation and wastage. A depository who has no personal interest in the deposit does his best for the owner. Since being trustee has no conflict with being responsible, accepting guarantees in deposit has found some problems.

**The view of Hanife about depository responsibility:**

The trust which is in hands of a depository is lost without violation. Thus he has no responsibility for that. Since people need warehouses, so in the case the depository is considered responsible, he will refuse deposits and some problems are created in people interest. The depository is like depositor’s hand and destroying the deposit by depository is like losing it by the owner (Tousi, 2009: 53).

**Non-responsibility of trustee:**

One of general principles of trust is trustee’s non-responsibility which all jurists and lawyers have accepted that. Here, the reason of non-responsibility is proved by two known jurisprudence principles.

1) The principle of trustee’s non-responsibility among popular jurisprudential rules in which there is consensus (depository).

2) Beneficence rule.

**The principle of trustee’s non-responsibility:**

This rule is one of popular jurisprudential principles which jurists accept it. No conflict has been mentioned for it (Fazel Lankarani, 2004: 28) and the jurists cite it in many cases and its result is that: when someone takes another one’s property as a trust with or without a contract and the property is lost without any violation and wastage, thus he is not responsible (Makarem Shirazi, 1996: 231). The author of deduction principles says: “the trustee is not responsible, only in the case of violation, wastage and loss (Tehrani, 1932: 107).
Beneficence principle:

The trustee allowed by the owner or lawyer maintains the property for owner interest and here the trustee is well-doer and God say: “ما علی المحسنین من سبیل” and the word “سبیل” is unknown and the negation way and is general, so any negative way for benefactors has been rejected and there is no doubt that trustee responsibility is negative way.

The views of jurists in conflicts and cancellation:

When a depositor demands his property and depository rejects it, actually the permission of deposit maintenance has been terminated. Therefore he is betrayer by his thoughts and the property is guaranteed. As the owner demands his property from the depository and he rejects or keeps it, he is responsible, since the owner has requested and removed him from maintaining the property and afterward in the case of maintenance, the depository is usurper and responsible:

When; a) the owner resorts to deposit evidence. b) When the trustee ignores swearing; and d) when the trustee admits to it (Alzahili, 2000: 37)

When conflicting, if the presence of deposit is ignored, the receiver swears and if before swearing, the owner resorts to evidences, the depository will be responsible. Unless his answer is that; “you are not qualified for anything”. Innocence principle is among important rules of judgment thus in the deposit contract when someone denies deposit contract, the innocence principle confirms him. Although in deposit contract, the depository is not responsible for given properties, in the mentioned claim, the trustee has proved his violation in a way and it is clear that by proving violation, he will be considered responsible. Of course, if the depository claims that he has no property belonging to the depositor, he won’t be responsible to the properties, though the deposit is proved, since the deposit may be lost without any violation and wastage, and in this case there is no guarantee (Shahmalek pour, 2011: 230).

Denial from Hanife point of view: If the owner of deposit demands it and the depository deny it then the property is lost. He will be responsible, when demanding the property. The owner removed him from maintaining and afterward the depository will be considered violator. If he admits after his denial, he won’t be innocent, because the contract has been removed. Since demanding return by the owner is expelled by the owner and denial by the depositor is cancellation. So, the contract has been removed and won’t be returned.
Denial from Malekiye point of view:

If the trustee denies the property i.e. he says: I received no deposit from you and this includes four states:

First state: he insists on his denial and there is no evidence for its owner. In this situation, the depository is not responsible.

Second state: the depository admits after his denial and claims its loss and there is no evidence. In this situation, he will be responsible for his confession that has no benefit for him.

Third state: he denies his depository and then admits that he has not returned the property to its owner and resorts to evidences for returning the property. Some people say that the evidences are not accepted since he is violator himself and some jurists argue that it is acceptable.

Fourth state: he denies his depository and the owner resorts to evidences and then the depository claims returning and presents evidences, in this case the principle is like third case (Aljaziri, 1998: 261).

Invalidity of selling contract:

1. Death of depositor and depository: death of each contract part is among cases which cause its invalidity.

If the depositor died and his heirs is a group, so the depository should give the property or loan to the all or to one whom the others accept and if he returns to some of them, he will be responsible to others’ share (Helli, 1976: 212). If the depositor and depository die after deposit contract, it will be cancelled since the validity of deposit has been lost (Alzahili, 2000: 134). In the case of owner death, the property will be a legal truss. Therefore it is required to return as soon as possible, but to whom?

When a depositor and the owner of a property dies, it is required the trustee to return deposit to heirs or his lawyer or representative who have qualification and otherwise he must return the property to someone who is qualified and the representative of imperfect one. And if he returns the deposit to someone without permission of the others, he will be responsible towards their share, since he has violated in their contribution and has given their right to the others. The depository must return the deposited property to the heirs as soon as possible, whether they are informed or no (Ameli, 2010: 173).
Shafi‘i view:

Whenever the owner or his heirs demand the deposit and are qualified to have it, the depository must return the property because of God words who says: return the trust to its owner but if he has no qualification, there is no need to return and it is forbidden. so if he returns, he will be responsible and if the property is returned while drunk, it is possible to say that there is no responsibility and the drunk one is addressed m but the child is not same (Alsharabini, 2000: 81).

Death and inhibition of appeal for depositor and depository:

If a depositor is inhibited from appeal, the deposited good changes from owner trust into legal trust. When madness and faint or death happens to the depositor and the owner, the property remains as legitimacy trust and if it is demanded, it will be a legitimacy trust even when the madness or faint is over. Since it is a legitimacy trust, it must be returned as soon as possible. In “needy singer “which is from popular books of Shafi‘i, it is declared that the deposit contract is canceled by madness and faint of both depositor and depository and it is required the trustee to return the property to his representative (Alsharabini, 2007: 81).

In the case of death and cancellation of contract, it is required the depository to return the property into its owner or lawyer or his heirs. Of course, there is a need to have some witnesses for returning the property. When in lawsuit, the depository’s claim is accepted just by resorting to the evidences. However, if deposit contract didn’t cancel, for returning the property there would be no need to evidences and the trustee’s claim was accepted (Shamalek pour, 2011: 223). When deposit contract is cancelled by death or madness or faint of depositor, the deposit is changed from owner trust into legal trust and it is required the trustee to return the legal trust into its owners or to inform him and delay is not true, unless in the case of religious problem and when postponing the return or inform, he will be responsible. Even, without violation and wastage, a delay without an excuse will be considered as wastage and negligence. The difference between two types of trusts is that the owner trust is by the owner satisfaction, however the legal trust is without his permission and perhaps without his knowledge such as cloth which has been thrown into neighbor’s yard by wind.

The views of public jurists:

Malekiye, Shafi‘i and Hanblai argue that if the deposit is lost after its application, the trustee will be responsible, though the loss is for disasters. Since by his violation in use, the contact has been canceled and it is like that a depository at first denies the deposit and then admits m but he is responsible to return the property into its owner (Aljaziri, 1998: 46).
Conclusion

Deposit which is a customary and religious subject, its legality and requirement to maintain and return is among principles that have been proved by verses and narratives. Verse 58 from Nesa Sura is among the verses which is based on the above three principles. A person who is depository receives the property freely, if he has no violation and wastage. When keeping the property and protects it like his own property, he is not responsible for the owners’ right to demand his property or claim compensation. Also, maintenance and returning the deposit is necessary and returning the deposit should be quickly by demand of the owner. The parts of contract could cancel it whenever they want. The conditions of parts should be considered in deposit contract. This means that both parts must be mature and perfect in order to make a contract. If one of the conditions is not present for parts qualification, the deposit contract cannot been constructed. All jurists agree for non-responsibility of the trustee but this consensus is not absolute. There are some exceptions such as violation and wastage, treason and guarantee condition of the trustee. Also non-responsibility of the trustee has been proved according to two known and accepted principles of “non-responsibility of trustee “ and “beneficence principle “.
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