



Comparative study of agreement on transactions in Islamic jurisprudence and Iranian law

Mohammad Reza Marandi¹ and Rashid Jalali Jeivan^{2}*

1 PhD of International Law, Faculty member of Islamic Azad University, Garmi Branch, Iran

2 Student of Private Law, Islamic Azad University, Garmi Branch, Iran

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ABSTRACT

To investigate the letter of promise in principles and documentation of jurisprudence, we should go unto resources required people to fulfill its obligations and treaties. Quranic explanation such as and prophetic narrations have been applied to all contracts and conditions and required Muslims in each age and time, to be loyal to all their obligations and treaties (that are not inconsistent to the general principles of religious law). In Iranian legal system, Contracts had been in two forms including: Certain contracts and uncertain contracts. The letter of promise have been included Article 10 of the Civil Code and is binding document In accordance with Article 10 of the Civil Code that says: "Private contracts are penetrating towards those who have signed it if it is not against the law". There are many signs to the necessity of letters of promise obligations in verses, narrations and legal articles, So that this document, In addition to credibility is irrevocable if it has been set correctly. And Pledged cannot deny these obligations with his unilateral will and without compromising the obligee and refuses to do it.

Keyword:

letter of promise,
transactions, law,
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*** Corresponding author: Jalali Jeivan**

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INTRODUCTION

The letter of promise issue in Iran is of the legal challenging issues in people relationships with each other that claims caused by it, have been always assigned the major part of cases in justice court branches to own. The letter of promise is a writing often normal, indicated an agreement on contracts in due date which guarantee of their offending enforcement is payment. This agreement is consists of the Article 10 of the Civil Law (Jafari Langrudi, 2009, page289). The letter of promise refers to the document which is usually normal and contains Contract and is an agreement to do deal among two or several people in the future which are set before the original deal. In this way that, the owner does not render the property in deal to other in distance between the promised deals till doing it. And the front sides do the original deal than that property. And party's conventionally provides guaranteed money as guarantee to offending these obligations (Abhari and Sorkhi, 2008, page 159). The letter of promise has the nature of legal and has been frequently considered in Iranian Civil Code. The Article 219 of Civil Code resolves that: "contracts based on the law are binding between the Pledges and legal deputy unless be terminated the consent of the parties or legal cause". And the Article 10 of Civil Code refers to the contractual principle of freedom. According to this principle: "Private contracts are penetrating than those who have signed If it is not explicit opposed to the law". Islamic parliament has been followed the Opinion of Imamiya jurists by Verification and approval the Articles 10 and 758 of civil code in Legal reforms of 1982. The provisions of the article 10 of the Civil Code has been accepted in Jurisprudence (Catoozian, 1997, page109). But in this study, due to the existence of interpretations and multiple striving hard of the nature of the letter of promise in jurisprudence and Iranian law, it has been discussed to the comparative study of legal and Jurisprudential nature of the letter of promise in deals.

2- Concepts Definition

2-1- Letter of promise Definition

The letter of promise is a writing often normal, indicated an agreement on contracts in due date which guarantee of their offending enforcement is payment. This agreement consists of article 10 of the civil code (Jafari Langroodi, 2009, page 289). The letter of promise refers to the document which is usually normal and contains Contract and is an agreement to do deal among two or several people in the future which is set before the original deal. In this way that, the owner does not render the property in deal to other in distance between the promised deals till doing it. And the front sides do the original deal than that property. And parties' conventionally provides guaranteed money as guarantee to offending these obligations (Abhari and Sorkhi, 2008, page 159).

2-2-document definition

In legal terms, the document "is a written that is able to adduce In the case of argument or defense according to Article 1283 of the Civil Code ". In this point of view, in its specific meaning, document is the "reason" and paragraph 2 of Article 1258 of the Civil Code that has mentioned written documents among the proof of claims reasons, refers to this Particular concept (Catoozian, 2004, volume1, page 275).

3-2- Concept of contract

The article 183 of civil code described the contract such as "contract is that one or more persons are committed to something against one or more other persons and be acceptable to them.

The letter of promise in Jurisprudence

To investigate the position of letter of promise in Jurisprudence, we should search in materials about respect to the promise and treaty and the necessity to adhere to the obligations, because the letter of promise also comprises a commitment and treaties.

In the sources of Jurisprudence in the context of obligations, have been said much words and recommendations to adhere to treaties, among them we can mention the following:

Quran verses

- 1- «يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ»- (Ma'idah / 1) " O you who believed be loyal to your Contracts and treaty".
- 2- « وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ وَلَا تَنْقُضُوا الْأَيْمَانَ بَعْدَ تَوْكِيدِهَا »- (An' am / 9) " and...and be fulfill to your covenant when you covenanted and did not violate the treaty that did it strong and firm and...".
- 3- «وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا...» "kept their promises that will be asked in truth of resurrection of the covenant" (Israel / 34).
- 4- «وَمَنْ أَوْفَىٰ بِمَا عَاهَدَ عَلَيْهِ اللَّهُ فَمَسْئُورِيهِ أَجْرًا عَظِيمًا »- "One who is faithful to the covenant with God the Allah will grant him a great reward" (Fath / 10).
- 5- «يَا أَيُّهَا الَّذِينَ آمَنُوا لِمَ تَقُولُونَ مَا لَا تَفْعَلُونَ. كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لَا تَفْعَلُونَ». "O you who believe! Why say things that do not practice it. Very hard to bring the wrath of God that to say and practice opposite" (SAF / 2 and 3)
- 6- «وَالْمُؤْمِنُونَ بَعْدَهُمْ إِذَا عَاهَدُوا...» "if they pledge to fulfills his pledge" (al-Baqarah / 177).
- 7- «الَّذِينَ يَنْقُضُونَ عَهْدَ اللَّهِ مِنْ بَعْدِ مِيثَاقِهِ وَيَقْطَعُونَ مَا أَمَرَ اللَّهُ بِهِ أَنْ يُوصَلَ...» "those who violate God's covenant after its becoming strong and stable and separate the string that God commanded them to link it and they are spoiling, they are same losers" (Baqarah / 27).

Letter of promise primary conditions from the perspective of Jurisprudence

The issue of "primary condition" for a long time, especially in the last two centuries, have been disputed by scholars . Some of them "primary condition" is not known as binding and some have been denied external existence of that even have known it conceivable. In contrast, the group believe that its primary conditions there, but independent and binding contract .

Jurists on "primary condition" disagree, some opposition and some support it. Here, in order to achieve a comprehensive view, to examine the evidence we discuss the pros and cons primary conditions.

3-2-1-1-arguments of those who maintain the nullity of the primary conditions

In the study of words jurists can be observed that the reasons for the invalidity of the primary conditions have been filed, of which it is said:

First, Lghvyyn express the meaning of the term as if it were bound by the obligation by the sale and the like and customs (rationally) also refers to the condition, the transaction can understand commitment, not an absolute obligation, and

commitment to, so primary conditions can not be regarded as manifestations of the condition (Mousavi Khomeini, 1987, p. 86).

Secondly, given that the meaning of the condition of "absolute commitment" and subject to the hadith "Almvmnvn bed Shrvthm", the primary condition can not be considered Wafaa, as the late Sheikh Ansari Eight of the conditions of "health condition 'knows the condition in the marriage contract; therefore, if the parties to the contract agree, according to the requirements for conditional on there will be famous scholars, but unlike in this case (inaccuracy) because they make the commitment, if earlier marriage is a "primary obligation" would be "definitely" do not Fulfill.

Thirdly, if the "absolute commitment" Although not a transaction Also, be sure Wafaa, meaning that fulfillment of all the "promises" is necessary to fulfill that promise obligatory, while renowned scholars do not know. So it seems that a major cause of the rejection by some jurists' accuracy of primary conditions, be that in practice and dictionaries, words do not match their condition with absolute commitment, as quoted Imam Khomeini's viewpoint on the definition provided in this it was pointed out. In addition, it is likely that even possible example of "promises" that prove the fulfillment of its obligation is deliberation.

3-2-1-1-arguments of proponents of primary conditions

All the conditions and obligations it can be achieved. Of course this statement to be correct when he said that as the "conflict of the evidences proponents of invalidity primary conditions" proves two things:

1. primary conditions are right and necessary to Fulfill;

2. The term "condition" is applicable to the contract.

A) Authenticates the primary conditions

It is not clear that all, bet requirements and obligation by the sale and the like have meaning, as the late Seyyed Mohammad Kazim Yazdi cite some words from the dictionary of the terms "undertaking" means have concluded that condition, forgery and make certain that requirement and hence the application of the condition in primary conditions to "real use" knows (Tabatabaei Yazdi, 1410 AH, p. 105 and 106). In addition, some applications of the word "condition" in the language infallibles understood that the purpose of the condition mentioned in the hadith, "absolute commitment".

B) Compliance conditions of the contract term (contract)

Due to the fact that "contract" in nature, nothing but commitment is not one side versus the other side of the same measures that are in them, "the credit relationship between the parties" and their consent to be bound by and legal right of the obligee, the "basic guarantees" there will be, so according to Wafaa be the primary conditions, contracts are basically correct and necessary Wafaa unless they brought evidence of corruption, as some scholars for this hadith to prove "the need for contracts" and others (MARAGHI, 1418 AH, Alnavyn, p. 25) "accuracy contracts' and others prove the authenticity of the conditions, the verse" Vfva Balqvd "resorted (Snhvry, Bitā, S154 156). It is clear that proving the necessity and validity of contracts by the condition, and also prove the validity of condition due to the aforementioned verse, subordinate to their meanings customary applicability to each other.

3. Letter of promise in Iranian law.

Among the provisions of Article 219 of the civil code with the term "contracts, which is located between dealers and Vice-law that is binding unless the parties voluntarily terminated annulment or legal cause." Characteristics that clearly indicate the need for commitments from its Letter of promise and obligations will be remembered as a basic necessity.

It also requires dealers to all results under common law or the law of contract is required can be achieved. "

Article 221 lyrics were: "If someone does something or commit commitment to refrain from doing something, in case of violation, the other party is liable for damages, provided that the compensation, stipulated or, as mystics commitment is clear or in terms of the law, would be a liability." This phrase also implies the need to contractual obligations, including the obligations of Article 221 Letter of promise, because if committed when they will be able to shirk the commitments undertaken by the compensation means and not conceptual.

Article 222 of the Civil Code also allowed obligee Commitment is committed to implement cost And Article 238 of the Criminal Code principle on the need for implementation lays with the same phrase, Even though the act of commitment by a third and the cost to be committed: "If the current contract conditions and forced to commit, to do the impossible, but it is possible ruling by someone else can be bound to sletter of promise, it would provide actuality" In addition, Article 239 of the Civil Code provides: "If the conditional mandatory for conditional action, it is not possible and the conditional verbs such other actions that can not be located on the opposite side from him, will have the right to terminate the transaction. " This means that the principle of the necessity of contractual obligations, including letter of promise home has been laid, Ie if the act committed by the undertaking or the promisee and third (under articles 222 and 238 of the Civil Code) does not seem possible to terminate the innings. Since articles 46 and 47 Real Estate Registration Act, registration of contracts and transactions relating to immovable property requires the same or interests and guarantee its implementation in Article 48 of this law. So, contrary to those who have seen these materials prevent Letter of promise validation, Because it must be said that letter of promise home to its own meaning, its commitment to provide the parties after the preparations and arrangements and terms of the transaction, in due course, Official documents present in one of the offices and the disclosure of the contract of sale apply to the transfer of the official document of the transaction to the buyer's name. After such a contract, not only does not conflict with the provisions mentioned in the law, that actually focuses on the formalities necessary legal and transaction record. Article 219 of the Civil Code states:

"Contracts, which is situated between the parties in accordance with the law and is vice president of binding Unless terminated by both parties annulment or legal because "in this Article, the principle is the basis of appropriate contracts Although this article is a variety of reasons but as has been mentioned in the text of the law And judges and courts from the perspective of legal logic requires a basic rule also regard it as a reason for mentioning it as can be seen the top of the binding of contracts referred to in this article is on but there are two

exceptions to this general rule that a contract is terminated due to law. The other is that the marriage is dissolved by mutual arrangement annulment, which then Khvdaltzam with the consent of the parties have taken to survival. Articles 397 to 440 of the Civil Code Option law that the parties or one of them may be able to terminate their contract with them, for example, recognized that Article 399 states: "The sale contract may be betting that a certain period for the seller to terminate the transaction or clients or both is foreign person" under Article 283 of the Act also stated that: "After the annulment of the transaction the parties can take it." In fact, these two materials are exceptional in the top section 219 which referred to the need to put contracts. On the other hand is the interpretation of the article.

3.2 letter of promise from the perspective of Article 10 of the Civil Code and its legal implementation

Today conventional lawyers are interpreted of such contracts without history and mention the name in the law to indefinite contracts (Jafari Langaroudi, 2009, pp. 460 and 462) and Article 10 of the Iranian Civil Code which says: Private contracts to those who have signed it, If that is not against the law, is valid.

This principle seeks to express the free will to choose the Types of Contracts and attention to the subject of contract and the emphasis on the principle of consent and autonomy of the parties necessary to fulfill the contract. In principle, the establishment of Article 10 of the Civil Code had been because that individuals with regard to economic developments and the complexity of legal relations and social requirements, to be free in the how to create compelling and useful bonds and law to know penetrating those contracts that general principles and basic conditions of contracts and good behavior has been observed in them. Article 10 of the Iranian civil law apparently has donned the garment and thus, implicitly, the will for freedom has been guaranteed. This does not mean that the provisions of Article 10 of the Civil Code rights has not experience, And this legal establishment, had been innovation of civil law writers or imitation of European Patents; For the past that Shiite jurists "topic of condition," particularly in the provision for rights and property have followed the same principle and the nature of "the conclusion of peace" had also been for the people's freedom. Many of jurists "need to fulfill the contract," limited to certain contracts have not known, but according to some verses and hadiths that will be addressed in the near future, All transactions are rational that does not contradict with Islamic rules properly and fulfill be considered. For this reason, some Muslim jurists have said (Haier, 1373, p. 2): "Assuming that the Iranian Civil Code Article 10 to be adopted of the French law had been no need to do it; because in Islamic jurisprudence has been noted to this issue" (Jafari Langerudi, 2009, p. 190).

4. Conclusion

With regard to the doubts about the validity of the letter of promise in religion and principles and legal reasons, need or lack of need for contracts contained in such documents, What as a result of these debates and arguments can be expressed in this research is that the Koranic interpretations such as «أوفوا بالعقود» And the prophetic tradition «المؤمنون عند شروطهم» compared to all contracts and clauses, has been

given and believers and Muslims are required to be faithful in any day and age with all their obligations and treaties (has not violate with the norms and principles of law), whether these agreements become in the context of certain contracts in the future or to take the another form. The letter of promise as a document containing the obligation to transfer the property in the future, include a full contract and is a bilateral agreement that has been created to mark the time requirements and the need to abide by its provisions, is not in contradiction with Islamic law and there are available evidences for this. Refers to Article 10 of the Civil Code implies that the parties are free to conclude the contract by whatever name that they wish. Civil law of works and conditions of some of the contracts that have more economic and social importance, has stated that the contracts, are named as certain contracts, such as sale, lease, peace, duties, powers of attorney. But predicting the contract is not means that the parties must be represented exclusively by the way. On the contrary, Article 10 establishment of Civil Code of 10 article including is for reason that people in the how to be free of obligation and commitment and due to the economic progresses and complexity of legal relations and social needs, to adopt those agreements do not coincide perfectly with certain contracts or they are not essentially adjustable with them.

One of the so efficient certificates that is operated the autonomy from it are the primary conditions, and because Article 10 of the Civil Code currently bears the burden of the will to the relative freedom.

in the verses, traditions and laws as well as many there are signs to the need for commitments of letter to promise, So that this document, if to be set properly; In addition of credibility is also enforceable and can not commit the one-way will and without compromising the obligee, has been ignored these obligations and refuses to do so. Therefore it can be said that in case of death or stone of committed, commitments which he undertaken in letter of promise are not obliterated, and the obligee can seek its implementation from the the deputy or heir of committed.

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