

METHOD OF ENDOWMENTS' ADMINISTRATION IN IRAN AND THE WORLD

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ABSTRACT

Endowment is an ancient and global tradition meaning the donation of money or property to another person or a non-for-profit organization for spending the interests stemming from it on a given use. Endowment is a legal action by which a person (real or legal) completely excludes him or herself from the ownership of a property as well as any sorts of conveyance, including voluntary ones such as various kinds of transactions and natural ones such as inheritance, and other occupations and gets its interests circulated on God-liked and charitable affairs forever. The present study aims at investigating the method of endowments' administration in Iran and the world. Based thereon, the information gathering has been carried out through library research and taking notes in the libraries inside the country and taking advantage of the foreign ministry's potentials, scientific software packages and international websites. The old methods of the endowments' profitability were limited to such things as leasing, selling, transformation to the best state and sales of the interests like the water of the endowed aqueducts or the fruits of the endowed orchards for a given period. These methods have been put gradually into practice based on the endowment needs by the jurists. However, one should be looking for new ways of using the endowments. Therefore, meanwhile investigating the endowments in Iran, the study tries analyzing the properties, duties and obligations of the endowed properties' proctors and supervisors so as to evaluate the methods of rendering the endowed properties more profitable; in line with this, the endowment styles were explored in the other spots of the world, including England, France and Arabic countries. In the end, the endowments were compared in Iran with those in Arabic, Muslim and western countries.

Keywords: endowment, endowed properties' proctor, endowed properties' supervisor, trust

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INTRODUCTION

Endowment or entrustment is amongst the most distinct and oldest valuable heritages of the mankind culture and civilization and it has been exercised since early Islamic period in all the human communities and many valuable and effective works have been written in various cultural, scientific, social and economic areas despite the large number of the problems. Considering the importance of endowments during a year or in the course of time, the individuals from all around the globe endow their private properties for their personal purposes and intentions. The navigation of the endowments based on the donors' intentions can supply most of the social needs and society's requirements and lighten these needs' burden on the shoulder of the public treasury house or the governments' public budget.

Based on the civil law's definition, endowment includes the retention of a property and use of its interests for a God-liked purpose. By the exact property's retention, keeping it from conveyance as well as occupations that may cause its wastage is intended. That is because the endowment's goal is the donee's perpetual benefiting from the endowed property and this is why it is called endowment; by the spending of the interests for God-liked purposes, the delegation of the interests for God-liked and social charities is intended.¹ In expressing the common meaning of endowment which canonically encompasses several significations, jurists have discrepancies and it can be possibly stated that such discrepancies arise from some's recounting of it as a sort of contract and some other's describing of it as a sort of

unilateral action with valid consequences. Imam Khomeini (may Allah consecrate the honorable soil of his tomb) orders that "endowment is using a thing for a special purpose or a given person or other specifically stated things so that the endowed property's interests can be applied for them".² Sheikh Abolghasem Najm Al-Din Mohaqqeq Helli defines endowment in the book "Shārye'e Al-Islam" in the following words: "Al-Waqf Aqd Thamaratahū Tahbes Al-Asl Wa Etlāq Al-Manfa'ah".³

The most important and most essential aspect in the discussions on endowment is the role of endowment in the development of the Islamic culture and civilization and perfection and development of the divine and spiritual values. Culture and civilization are laid on the foundation of the material and spiritual values. The most important role that endowment can play in the culture and civilization's development is the spiritual development of the society.

Amongst the most distinct social properties of the endowment system is its not being class-based meaning that the endowment tradition is practiced equally for all the social classes and it is not exclusively limited to a given class. The endowment system includes a fundamental framework comprised of mutual responsibilities and social affiliation between the right and the needy. The endowment system is one of the mechanisms for the actualization of social justice

² Ruhollah Musavi Khomeini, *Al-bay'eh*, vol. .3 (Tehran, printing and publication institute, 1987), 82.

³ Ja'afar Ibn Hasan Mohaqqeq Al-helli, *Sharāyeh al-islam fi masāyeh al-halal wa al-haram* (Persian translation, Tehran, Esteghlal, 1983).

¹ Hasan Emami, *Civil Laws* (Eslamiyyeh Bookstore Press, 1996), 68.

and a peaceful means for the redistribution of income without any coercion and intervention by the governing power. Endowment plays a tangible role in the offering of welfare services (particularly in the ceremonies and events and important personal and familial decision-makings such as marriage, employment, education, holding celebrations and mourning ceremonies and so forth).⁴

In this study, the information has been collected through referring to the libraries and taking notes from the domestic sources as well as enjoying the foreign ministry's potentials, the scientific software packages and international websites. Based thereon, the present study aims at investigating the endowments' administration styles in Iran and the world.

STUDY'S THEORETICAL FOUNDATIONS

Efforts have been made in the present study to investigate the endowment and endowed properties in Iran and other spots worldwide. In line with this, the endowments are seminally investigated in Iran and secondly the endowments and endowed properties will be evaluated in the laws of England and France and then in the Islamic and Arabic countries.

Endowments in Iran

• Endowed Properties' Ownership

Some jurists believe that the exact endowed property is retained and the kept in the ownership of the endower because the apparent necessity of the endowed property's retention would be contradictory to its conveyance to another person. So, it is only the interests or the products of the endowed property that can be granted to the donees.⁵ In other words, the retention of the main property means keeping the exact endowed property in the endower's ownership and any sort of conveyance will be contradictory to the endowment principle. Thus, it is only the product of the endowed property or its interests from which the donees can be benefited. The proponents of this theory accordingly allow the selling of the property if it is needed by the endower as a precondition for endowment.⁶

Article 61 of the civil law stipulates that "endowment takes effect with the proper donation of the property by the endower and its accurate reception by the donee and the endower cannot refer thereto for making any changes therein; s/he cannot also exclude any persons from being endowed therewith or, contrarily, include any persons in the endowment inclusion circle or establish a partnership relationship with the donees; the donor cannot also determine a proctor if s/he has failed to do so in the endowment contract; s/he cannot also introduce him or herself as the proctor". It can be understood from this article that the exact endowed property is excluded from the endower's possession and s/he cannot ever reclaim it. In this article, civil law prohibits the endower from any reclamation and change in the endowed property or the use of its interests which means his eternal ownership divestment in such a way that the owner cannot make any changes or occupations in the endowed property and s/he cannot also make use thereof.

It can be also perceived from the civil law that it is very difficult to accept this theory (donor's ownership of the endowed property) and the donor cannot be accordingly viewed anymore as the owner thereof.

That is because the endower has donated his or her property after the actualization of the endowment and his or her relationship with the property is stopped and s/he has no right to make changes and occupations therein. In the meanwhile, many jurists believe that endowment is a sort of the donees' possession of the exact property meaning that a given endowed property is transferred to the donees following the endowment.⁷ The proponents of this theory base their ideas on three reasons for confirming them:

The first reason: the permissibility of using the property's interests, i.e. the entitlement to the products thereof, and the sanction for avoidance of the property's wastage exist for all the endowments and, simultaneously, it is made clear based on cause-and-effect maxim that the donees are the owners of the endowed property; in other words, the ownership of the interests is to be followed by the possession of the whole endowed property. On the other hand, the waster of the exact endowed property is liable for the compensation. There is a concomitant relationship between guaranteeing the non-wastage and ownership in such a way that guarantee has been stated as pivoting about ownership in the narration "Man Etlaf Māl Al-Qair Fa Howa Lahū Zāmen". Therefore, the donees' possession of the endowed property is consequently proved.⁸

The second reason: in regard of the donees' ownership of the exact endowed property, Saheb Jawaher reasons that the endowment is a contract in need of acceptance. Such a contract entails the exclusion of the donor from the possession and the inclusion of the donees therein otherwise there would be no need for acceptance if the donees' possession of the exact endowed property is rejected.⁹

The third reason: some general jurists realize the donees as the owner of the endowed property based on another reasoning and believe that it is insensible to imagine a property without owner as well as opine the persistence of the endower's possession. Therefore, after the actualization of endowment, the exact endowed property is excluded from the endower's possession and it has to be necessarily added to the ownership of the opposite party (donees) and be possessed by them.¹⁰

It has to be stated in rejecting this theory that this that the exact endowed property is to be viewed as an example of the properties in general cannot be accepted for this a sort of evasive reasoning meaning that being a property is the product of the actualization of the donees' possession which per se only holds true when the exact endowed property is viewed as a property. The sure thing is that the endowed property is an exact example of a property and a property can have no owner. In essence, the unpossessed are viewed as financial and landed properties for they can be exchanged for other things but they do not have owners. Also, the properties the owners of which have abandoned them are not in anyone's possessions and have no owners until an individual takes possession of them.¹¹

Although many jurists support this theory, inserting the endowed property into the donees' possession does not seem to be

⁴ Mohtadin, Monthly cultural, political, social and domestic journal of charitable affairs and endowments' organization, 19 (February, 2007).

⁵ Sheikh Muhammad Hussein Āl-e-kāshaf Al-qitā'a, *Tahrir Al-Majalleh*, Vol. 5 (Najaf, Al-Maktabah Al-Mortazaviyyeh, 1980), 71.

⁶ Sayed Mortaza Alam Al-hoda, *Al-intisār* (Qom, Dar Al-Quran, 1985).

⁷ Abu Al-qasem Najm Al-din Ja'afar Ibn Hasan Helli, *Sharāyeh al-ahkām*, Vol. 2, 2nd ed. (Tehran, Esteghlal, 1989), 218; Sheikh Tusi, *Al-mabsūt fi fiqh al-emāmiyyeh*, Vol. 3, researched by Muhammad Taghi Al-Kashafi (Tehran, Al-Maktabah Al-Mortazaviyyeh, 2008), 290.

⁸ Ja'afar Ibn Hasan Mohaqeq Helli, *Sharāyeh al-islam* (Persian translation, Tehran University Press, 1989), 261.

⁹ Najafi, 28.

¹⁰ Abdullah Ibn Ghodameh, *Al-Moqni*, Vol. 2 (Cairo, Dar Al-Kitāb Al-Arabi, no date), 198; Muhammad Abid Al-kabisi, *Verdicts on endowment in Islam*, Vol. 2 (Sari, general office of Mazandaran's haj and endowments, 2005), 95.

¹¹ Muhammad Kazem Tabataba'ei Yazdi, Molhaqāt orwah al-wathqā, Vol. 2 (Beirut, Mo'assessah Elmi Matbū'at 1989), 232.

true because an owner has a lot of authorities about a possessed property and s/he can enforce such a right by making changes and occupations therein whereas the donees are restricted from such undertakings in the endowed properties and the only right they have is the use of the endowed property's interests. This right has also been imagined in some other contracts like renting and retention, including forever, for a given period and for residence.

There is also another notion explicitly mentioned in the civil law as well as in the law on the endowment affairs that an endowed property belongs to the legal personality of endowment.¹² This latter idea is more acceptable. Since an endowed property is used in the course of a long time and its land still remains in the form of an endowment even with the destruction of the superstructure, it has to be stated that this property has to have a life longer than its managers in order to be kept immune of the events and possessions in various epochs of the history and, this way and with the granting of a legal personality, the endowed properties can protect themselves in the course of long years in a self-reliant manner and there would be a need only for competent managers to maintain them and take advantage of their interests and spend them along with the endowment goal.

If such properties are envisioned as belonging to the endowment's legal person, the creditors of the endower and the donees would have no right in them.

- **Properties, Duties and Obligations of the Endowed Properties' Proctors**

It becomes clear in an investigation of the civil law's articles about the proctorship of the endowed properties that no specific conditions have been mentioned for the proctors; of course, article 80 of the civil law and article 4 of the endowment law, passed in 1975, have reminded conditions and descriptions of the endowers in contracts of endowment as well as the proctorship certificates issued by the endowment organization's investigation department. However, this legal silence does not mean that everyone can shoulder the proctorship rather there are specific conditions in addition to the general conditions in the jurisprudence that will be explained below.

Properties of the Endowed Properties' Proctors

- **Legal Capacity**

Undoubtedly, every person should have legal capacity for being able to enter transactions and conveyances in respect to his or her own properties or as deputy, advocate, guardian and custodian or other titles in respect to others' properties under his or her authority.¹³ According to articles 210 and 211 of the civil law, a person should be wise, mature and fully grown-up in order to be able to use a property. Although the civil law does not mention legal capacity as a characteristic for the proctors and it has no verdict in this regard, the legal capacity of the proctors should not be doubted. The Islamic jurists agree that if the proctor is found having become mad after being appointed as a proctor of the endowed properties (in the form of permanent madness), can this invalidate his or her proctorship or not? As it was known, proctorship is amongst the binding contracts and, considering the regulations of this set of contracts, madness of a party to a former contract does not annul it. With this explanation, the proctor's madness does not cause the invalidation of his or her proctorship but, because insane persons lack the faculty of distinction and cannot enjoy the legal capacity of occupation, the ruler mentions

the term trustee at the side of the maddened proctor.¹⁴ And, having stipulated that the proctorship entails sanity, stipulates that the proctorship by insane persons is refuted.¹⁵

Since proctorship is a binding contract and the endower has no right to depose the proctor mentioned in the endowment contract's text, specification of a minor as the proctor and delegation of proctorship to him or her is likely to be harmful and the intellects avoid it. Thus, this theory that legal capacity for occupation by a lawyer is not a precondition in advocacy cannot be accepted in proctorship.¹⁶

- **Qualification**

Qualification includes a person's power, ability and competency for occupying a property s/he would become its proctor in future. Islamic jurists have reached a consensus about the proctors' qualifications as the prerequisites of proctorship's conclusion.¹⁷ Civil law has no special verdict on the proctors' possession of certain qualifications and it is silent in this regard. In case that a specific name is not mentioned in a text as the proctor meaning that if a person is appointed by the ruler or the endowments' organization as the proctor, the justification of his or her disqualification makes him or her deposed by a court's sentence or by the general investigation office of the organization.

In addition, if a person's name is specifically mentioned in an endowment contract as the proctor, s/he can choose a lawyer for administering the endowment's affairs in case of his or her being exempted from the direct involvement in such an administration because the lawyer's qualification equals the proctor's ability and power. In case of his or her being obliged for direct involvement or in case of the non-specification of a lawyer, a person would be appended to the proctor as a trustee by the request of the donees through the investigation office or a court.¹⁸

- **Justice and Trustworthiness**

Some believe that justice is not at all a precondition¹⁹ neither in the beginning and during the proctor's appointment nor during the proctorship and its continuation and whether the endower has him or herself happened to be the proctor or installed another to this duty. However, some opine that if the endower is him or herself the proctor, s/he is not needed to be just and, in case of determining another person, the proctor should be necessarily just. It has also been stated that justice is a precondition for the proctor whether preliminarily or in continuation. However, it seems that the civil law does not realize justice as a proctorship's precondition with its silence in this regard.²⁰

¹⁴ Muhammad Abid Al-kabisi, *Verdicts on endowment in Islam*, Vol. 2 (Sari, general office of Mazandaran's haj and endowments, 2005), 95. Ja'afar Ibn Hasan Mohaqqeq Helli, *Sharā'ie 'e al-islam* (Persian translation, Tehran University Press, 1989), 261.

¹⁵ Sayed Ruhollah Musavi Khomeini, *Tahrir al-wasileh*, Vol. 2 (Qom, the Islamic publication office affiliated with the society of seminary teachers, 2007), 83; Muhammad Jawad Moqniyeh, *Comparative jurisprudence (the five creeds)*, Translated by Ramezan Taimuri (Ā'ein Ahmad Publication Institute, 2015), 438.

¹⁶ Naser Katouziyan, *Legal actions: contract-unilateral actions of valid consequences* (Tehran, Ganj-e-Danesh, 2015), 86.

¹⁷ Sayed Ruhollah Musavi Khomeini, *Tahrir al-wasileh*, Vol. 2 (Qom, the Islamic publication office affiliated with the society of seminary teachers, 2007), 145.

¹⁸ Endowments' law, article 7.

¹⁹ Sayed Ruhollah Musavi Khomeini, *Tahrir al-wasileh*, Vol. 2 (Qom, the Islamic publication office affiliated with the society of seminary teachers, 2007), 91; Muhammad Ja'afar Ja'afari Langarudi, *Laws of properties* (Tehran, Ganj-e-Danesh, 1999), 231.

²⁰ Naser Katouziyan, *Civil laws: specific contracts; Donations*, 3rd ed. (Tehran, Ganj-e-Danesh, 1993), 236.

¹² Article 3 of the endowment law passed in 1975.

¹³ Civil Law, articles 956-958

- **Islam**

Most of the jurists realize Islam as the precondition for the authenticity of the proctorship and opine that the proctor should not be a Kaffir in case that the donees are Muslim or the endowed property is a generally Islamic subject like mosques, religious seminaries and so forth. Based on the honorable ĀYA "Wa Lan Yaj'al Allah Li Al-Kaferin Alā Al-Mo'menin Sabilā"²¹, the Kaffirs' guardianship over the Muslims has been denied. Now, if the donees are unbelievers, the Kaffirs' proctorship is devoid of any fault for them. One of the conditions of the proctors appointed by the endowment organization and court is their being Muslims. In the civil law, this precondition has not been explicitly mentioned but it seems that it is amongst the endowment's implicit in-contract conditions as also inserted in article 80 of the civil law.

The Duties and Obligations of the Endowed Property's Proctor

- **Maintenance of the Endowed Property**

An endower can specify the source of the financial supplies for the repair and maintenance of the endowed property during the contract's conclusion in which case the proctor should act as ordered by the endower. However, if the endower prefers to keep silent, the proctor should exercise proctorship as commonly performed and this can be understood from article 86 of the civil law wherein the repair and maintenance of the endowed property has been stipulated as preceding the payment of the interests to the donees. According to articles 21 and 22 of the executive procedures of the law on endowment and charitable affairs' formations, at most 20% of every year's earnings sum is allocated in the budget to the repair and reconstruction of the endowed properties in need of repair and when the aforesaid sum and the yearly income of the endowed property are found inadequate for the repair or reconstruction thereof, the endowed property's earnings of two or several years are reserved in addition to the cash sums existent in the specific endowed property's account so that the repair or reconstruction can be carried out on the right time.

- **Apportionment of the Endowed Property's Interests and Earnings**

The endower can grant equal or different shares to the donees. In general, the endower's notion determines the quality of the interests' apportionment. Article 87 of the civil law expresses in this regard that "the endower can set it as a condition that the endowed property's interests be equally or differently divided between the donees or s/he can give this authority to the proctor or another person so that s/he can make such a division as s/he deems appropriate". The endower's authority for dividing the interests and determining the obligations related thereto have been accepted by most of the jurists and law professors.²²

Some of the jurists believe in the equality of the donees' shares of the interests of the general and specific endowment. In justifying the abovementioned notion, it has to be stated firstly that the donee's number is not clear in the general endowment and, secondly, in case of the clarity of their number, the dividing of the interests by their number occasionally causes wastage. For example, when the donees

reach two hundred thousand individuals in number and the interests of the endowed property amount to three hundred thousand tomans, the equal apportionment of its interests would actually cause its wastage for the shares are reduced so extremely that it would lose its financial capacity.

However, in cases it is inferred from the statutes that the donees can directly use the endowed property's interests in a general endowment, the enjoyment of the property cannot be suspended to the collecting and apportionment of the interests by the proctor. For instance, when a walnut tree in a public passageway is endowed in such a way that the passersby are allowed to use its fruits or shade, its enjoyment does not necessitate the proctor or the ruler's permission.²³

- **Leasing of the Endowed Property**

As the representative of the legal endowment personality, the proctor can lease the endowed property in case of its being deemed expedient so that certain amount of money can be earned and spent on the stipulated uses.²⁴ It is clear that when the endower happens to specify the renting time, for example, by setting a condition that the lease term should last no more than a year, the proctor should follow the contents of the endowment letter and the endower's conditions. In the meanwhile, the proctor can conclude ten separate contracts of renting with ten different rent amounts for each year to lease the endowed property to a single person.²⁵

Leasing the endowed property is the proctor's right not the donees'. That is because the person who can lease the endowed property has guardianship over endowment. Now, in case that the endower appoints the donees as the proctor, they can lease the endowed property.

In special endowments, the endowment office's authority is shouldered by the proctor and the endowment office does not make any interference unless it is proved that the proctor is performing actions against the endowed property's interests and expediencies and harmful for the persistence of the endowed property and contradictory to the endower's idea. As an example, if the rent contract is endorsed for a trivial amount and not expedient for the endowed property, the endowment office enters the scene for observing the endowed property's interests and expediencies and can request the invalidation of the rent contract. Put differently, the endowment office is obliged to intervene only in such cases in line with the administration of the special endowed properties and take the required legal actions in a case-specific manner.

Properties, Duties and Obligations of the Endowed Property's Supervisor

- **Attributes of the Endowed Property's Supervisor**

The supervisor should have the proctor's features. Supervisor is an authority installed by the endower for supervising the proctor's precise enforcement of the endowment letter but s/he cannot directly intervene in the administration of the endowed property. As the manager of the endowed property, the proctor acts like the companies and business institutions' general managers but the supervisor, as understood from its name, is an inspector who oversees the enforcement of the endower's intentions as specified in the

²¹ Honorable SŪRAH AL-NISĀ'A, ĀYA, 141.

²² Naser Katouziyan, *Civil laws: specific contracts; donations*, 3rd ed. (Tehran, Ganj-e-Danesh, 1993), 236; Sayed Hasan Emami, *Civil laws*, 4th ed. (Tehran, Eslamiyyeh, 1987), 87; Imam Khomeini (PBUH), *Tahrir al-wasileh: kitāb al-waqf* (2nd ed., Najaf, Matba'a Al-Ādāb, 2011), 30.

²³ Muhammad Kazem Tabataba'ei Yazdi, *Molhaqāt orwah al-wothqā* (Beirut, Mo'assessah Elmi Matbū'āt, 1989), 228.

²⁴ Zain Al-din Ibn Ali Shahid Thani, *Legal discussions: sharh al-lam'eh al-rawzeh al-bahiyeh fi sharh al-lam'eh al-dameshghiyah*, 10th ed. (Tehran, Majd, 2014), 188.

²⁵ Abbas bashiri et al., *Applied laws on endowments and endowed lands*, 3rd ed. (Tehran, Jungle Press, 1955), 255.

endowment agreement as well as the expediencies of the exact endowed property. Based thereon, after determining a proctor, the endower can appoint a supervisor(s) for overseeing his or her actions and being asked if s/he agrees with the proctor's actions or not. In informatory supervision, the supervisor is obliged to inform the authorities about the proctor's default, guilt, inability or contingent violations and, in the approbatory supervision, the supervisor enacts the proctor's interventions and initiatives hence s/he cannot accordingly take any measures personally.²⁶

- **Duties and Obligations of the Endowed Property's Supervisor**

Supervising of the endowed property can take place in two forms: informatory and approbatory supervision. Like proctor, the supervisor is also a trustee of the endowed property²⁷. So, supervisor is held liable if s/he exercises default in fulfilling the duties assigned to him or her or if s/he practices treason with the intention of illegitimate exploitation and/or if s/he colludes with the proctor for misuse of the endowed property. Thus, the supervisor cannot be considered responsible for all the wastages and flaws caused to the endowed property because the maxim is that the supervisor is held liable for the losses caused as a result of his or her default and negligence in fulfilling of his or her duties and that s/he is excluded from the losses stemming from the others' actions or force majeure. The endower or the canonical ruler do not have the right to depose the supervisor unless it is set as a condition in the contract. It can be stated that the supervision is necessary. Of course, some jurists believe that supervision over the proctors for figuring their violations is permitted.²⁸

METHODS OF EXPLOITING THE ENDOWED PROPERTIES

The old methods of endowed properties' exploitation were limited to the followings: renting, selling and transformation into the best state as well as sales of the interests of the endowed properties like the water right of the aqueducts or the fruits of the orchards. These methods have been gradually put into effect by jurists based on the endowment needs. The forthcoming sections deal with their positive and negative points.

The sales of the generally endowed properties like mosques, schools, hospitals and so forth with the donees being the only owners having the right of enjoying them have not been permitted by the Imamiyyeh jurists, including Najafi in *Jawaher Al-Kalam*,²⁹ Sheikh Ansari in *Makāseb* (Ansari, 2000, p.163) and Imam Khomeini in the *Kitāb Al-Bay'eh*.³⁰

Some jurists have made a difference between the sales of the mosques³¹ and places like schools and hospitals but most of Imamiyyeh jurists³² have opined the impermissibility of selling the movable properties of the mosques such as mat, carpet, constructional materials and/or additional tools or depreciated instruments but asserted their faultless use in the other mosques.

²⁶ Naser Katouzian, *Civil laws: specific contracts*, Vol. 3, 5th ed. (Tehran, Ganj-e-Danesh, 2005), 225.

²⁷ Law of endowments, note 2 to article 7.

²⁸ Muhammad Ja'afar Ja'afari Langarudi, *Laws of properties* (Tehran, Ganj-e-Danesh, 2009), 236.

²⁹ Najafi, 358.

³⁰ Sayed ruhollah musavi khomeini [Imam Khomeini], *Al-bay'eh*, 4th ed. (Qom, 1990), 101.

³¹ Hayeri Yazdi, *Ibid*, pp.299-310

³² Zain Al-din Ibn Ali Shahid Thani, *Masālek al-afhām*, Vol. 5 (Qom, Mo'assessah Al-Ma'āref Al-Eslāmiyyeh, 1994), 417.

The sale of the endowed property depends on the donees' expediencies and consideration of the endowment's continuation and the various forms created in the former common laws and customs have been replaced currently by different forms in need of the jurists' expertise (Hayeri, p.180). Iran's law of endowment, as well, has allowed the sale of the endowed property and its transformation into other forms but in adherence to certain criteria.³³

One of the past methods is the enjoyment of the endowed property in the form of rent and taking advantage of its interests by the donees. The renting and lease verdicts are indicative of the general conditions of renting the endowed properties as well as some occasional specific conditions such as the one indicating that only the proctor and the supervisor are allowed to lease the endowed property and also that a judge can sometimes lease the endowed properties. The supervisor has no right to give the endowed properties on lease to him or herself and his or her children; the expediencies and interests of the endowed properties and the donees should be taken into account hence the rentals should not be lower than the remuneration.³⁴

Methods and contracts like exchange, bidding and long-term rent or the underwriting right are applied for the endowed properties with each having been suitable in its time but the economic evolutions and the society's needs and the endowed properties' requirements have caused numerous legal and economic objections that are beyond the present study's scope³⁵ but they have been briefly outlined below:

Exchange

The followings are objections to the exchange of the endowed properties:

1. The exchange contract cannot take effect unless through the simultaneous purchase of another property;
2. This method is exceptional and it can be only utilized in necessity cases;
3. It has been showed through experience that it has most often caused losses to the endowed properties.

Rent, Bidding and Underwriting

As for the bidding, there are numerous objections proposed in economic terms, including the followings:

1. The endowment organization loses its right of enjoying the endowed land in the long term in favor of the tenant;
2. The limitation of the cost of the bid exchange to certain cases
3. Failure in determining the rent term in the verdict causes the divestment of the endowed properties' rights
4. The bid right is transferred to the inheritors of a tenant with his or her death; the bid right cannot be delegated to another person and this is an important weak point to the disbenefit of the endowed properties; and,
5. The annual rent is usually very trivial and economically valueless.

Thus, it is necessary to replace the abovementioned methods by modern ones. The shortage of the financial resources and liquidity for the administrative affairs of the endowed properties is amongst the problems of the endowment sector. One of the important attributes of the endowment aiming at the higher productivity of the endowed

³³ Anonymous, *Collection of the endowment rules and regulations* (Chahr-e-Danesh, no date), 143.

³⁴ Muhammad al-kabisi, *Verdicts of endowments in islam*, translated by Sadeghi Goldar, Vol. 2 (Tehran, organization for haj and endowments no date), 31.

³⁵ Omri, *Al-ittijāhāt fi tatwīr al-istihmār al-waqf* (no date), 76.

properties is constancy or eternity;³⁶ hence, one of the consumption cases of the endowed properties' earnings is spending the revenues on the endowed property itself for its repair and reconstruction so that its persistence hence its perpetual interests can be guaranteed.

ENDOWMENTS IN THE OTHER SPOTS OF THE WORLD

Endowments in England

In the laws of England, there is no provision like endowment. The most similar provision to endowment in the England's laws is trust. In England, trust has a particular stance because its examples are so vast that it also includes testament, donation, advocacy and so forth. As a result of this vastness of examples, trust plays an effective role in the social relations. Professor Keaton states in a definition of trust³⁷ that "trust includes a relationship wherein an individual called trustee becomes obliged to fairly maintain and administrate a property (movable or immovable) in favor of some individuals, including the trustee him or herself, in such a way that the property's real interests benefit the interested individuals or purposes not the trustee(s).

Trustee is the individual who shoulders the administration of the entrusted properties in line with the owner's set purposes. The first trustee is usually appointed by the truster.³⁸ The relationship between the trustee and the entrusted property is the relationship between the legal owner and his or her property. Put it another way, trustee enjoys both administrative authorities and conveyance rights in the entrusted property and the latter can be carried out in the exchange or non-swapping forms.

The equitable owner of the entrusted properties puts him or her in a privileged position enabling him or her get aware of the property's administration and take measures in line with the preservation of his or her own rights and even file a lawsuit if deemed necessary. The entrusted property is one of the trust's pillars. According to Lord Longwall, there should be existent a specific subject in this regard. In other words, in order for a trust relationship to be formed, there should be a specific and special property existent and it happens to become the subject of trust. The entrusted property can be movable or immovable and it can be an objective right or a promised right such as debt, a company's share, an intellectual right such as a book or an invention's copyright and so forth. English jurists have not mentioned the capability of an entrusted property's persistence in respect to the enjoyment of its interests as preconditions of the entrusted property.

Although the entrusted property is given to a trustee for the enjoyment of the interested party or parties, it might happen sometimes that these entrusted properties are handed over to the trustees for repair and maintenance. Thus, the existence of a violation suffices the termination of such a condition's non-necessity. On the other hand, if the trusted property is found not being capable of standing the further enjoyment, trustee can exchange it for another property considering his or her authority of transformation and exchange. Thus, there is no reason for the necessity of such a condition.

Endowments in France

The most similar provision in France's law to endowment is the charity institutions and foundations. Since long ago, the French have been

donating their endowments and gifts to churches and religious institutions so that they can be spend on charitable affairs. Several decades ago, the foundation of charitable affairs and endowments was established in France for organizing the endowments and charities and for optimal use of the endowers and donors' individual and sporadic efforts.³⁹

One of the success secrets of this foundation is its "up-to-dateness". The foundation has worked beyond the traditional frameworks of the charitable affairs and it has not just sufficed to the washing of the dead's morgues and reconstruction of cemeteries and burning candles in the churches rather it has proved an active presence amongst the people and has chosen its plans and programs based on the society's needs.

In endowment in the legal system of France, "despite the relating of endowment to the private law institutions, the government exercises intensive interventions and tries controlling the endowment foundations. For various reasons, government is inclined towards the control of the endowment institutions; the first thing in this regard is that the general law institutions (including government) are to shoulder in France's judicial tradition and method the supply of "the society's public interests". Despite being enumerated amongst the legal private institutions, endowment claims a part of the general legal institutions (supply of the society's public interests). The supply of these interests is carried out by the general law institutions but endowment, as a private law institution, acts autonomously and intervenes in the area of the general law duties like an uninvited guest.⁴⁰

The most substantial activities of the foundations can be summarized on five axes: social assistance and cooperation, public health and hygiene, medical and scientific research and environment and cultural affairs. The foundation's qualitative activities are predominantly performed in social assistance and periodical or permanent cooperation.

Providing relief aids to the old people is one of the specific tasks performed by the foundation of charitable affairs. In the beginning of the foundation's activity, its program for helping the old people was case-specific and periodical. In 1974 and by the initiatives of the manager of the Echos Newspaper, a sum of 642 thousand francs was collected through people's aids for assisting the plans related to the old people. The old people were provided with instructions about how to administrate associations and offer voluntary activities. In the course of an instructional period, the old people and the associations were informed about their rights as well as the services that should be provided to them. Places were prepared for accommodating the old people. The foundation's later efforts were directed at creation of buildings like independent dormitories wherein the old people could independently live along with one another. These small apartments were not featuring that spiritless and coldness of the old people's nursing houses nor they caused loneliness and solitariness of them.

The activities in the area of adolescents were amongst the other specific tasks of the charitable affairs' foundation in France. In 1977, the foundation dedicated part of its efforts to the youth and children programs but, due to the tasks' vastness and volume and also as a result of the nature differences between the children's programs and

³⁶ Of course, a sort of nonpermanent endowment known as retention has been stated in Shiite jurisprudence.

³⁷ C. F. Padfield, *Law Mad Simple*. 352; J. G. Riddal, *The Law of Trusts*, P1989/249

³⁸ John Duddington, *Essentials of Equity and Trusts Law*, 257: The Settlor or Testator Who Creates The Trust Usually Appoints The First Trustees, 257.

³⁹ Bulletin De Fondation De France, *Le Me? Ce? Nat Des Donateurs* (1999).

⁴⁰ Hasan fereshtian, *A foundation for citizens: the solutions of the endowment and charitable affairs' foundation for the development of the western countries*, No. 2869, Hamshahri Newspaper, the page on thoughts, Tuesday, 15th of October 2002, 5.

adolescents' programs, this section was divided into two sectors of children programs and adolescents' programs after one year.

Amongst the programs that are still being continued, the creation of sections for offering education-aiding services to the children of the homeless women and assistance to the resolving of the familial problems and psychological conditions of the parentless children can be pointed out. Considering the high statistics of divorce and the problems with which the divorced parents' children have for meeting them, places were constructed for the divorced parents meeting of their children in a domicile-like environments away from the familial controversies and quarrels.⁴¹ International relief and emergency services in the third world countries are amongst the other tasks performed by the foundation of charitable affairs based in France. The foundation began its activities in the third world countries in 1978. In this year, the foundation provided aids in an operation called "coast" to the families in a famine crisis that stroke Nigeria, Senegal and Mauritania as a result of long-term drought.

With the advent of the modern technologies and computer networks since 1988, the foundation launched domestic networks in the children's sector to enable providing information and education to the hospitalized children and, at the same time, filling their leisure time with computer games.⁴²

Endowments in Arabic and Islamic Countries

In the laws of Egypt, the endowment structure and pillars are comprised of proctor, trustee, interested party and supervisor. The appending of the trustee to the proctor in some of the cases by the court's verdict along with another person serves the better administration of the endowed properties. This appending of the trustee to the truster's appointed person has not been authenticated in Egypt's civil law rather it is stipulated that the proctor is deposed with the discovery of a proctor's breach (theme of the article 731 of Egypt's civil law). Afterwards, the courts or the endowed property's right holders are to accordingly specify a supervisor with a wide range of authorities. In Egypt's laws, the endowed property is the one usable forever for charitable and God-like affairs.⁴³

In Turkey and since ottoman empire's time till the establishment of Turkey's republic government, endowments have undergone several historical changes, including 1) dissolution of the canonical and charitable affairs in 1925; 2) delegation of the administration and supervision of the charitable affairs to the prime minister; 3) establishment of the general and public endowment management organization under the supervision of the prime minister; 4) establishment of a ministry specific to the administration of religious and charitable affairs; and, 5) enactment and announcement of special laws for regulating the endowment affairs. Turkey was subjected to intensive evolutions in terms of the charitable affairs and endowments based on a laic system and the goal of the Turkish government has been since the beginning exerting more control on the public and specific endowments. "Supervision by individuals" such as private proctors and board of trustees has been excessively decreased and this group's actions and duties are supervised by the governmental endowment management office. Based on the enacted rules and

regulations, these individuals should provide their work reports and the other private endowment affairs' accounts to the government at least once a year.⁴⁴ Amongst the various kinds of endowments in Turkey, the "Excluded Endowments" are minimally supervised by the government and they are most predominantly supervised by the individuals and trustees' board but the number of such endowments is a lot fewer in comparison to the total number of other endowments in Turkey.

In the legal systems governing the endowment in the countries around the Persian Gulf, the issue of the "legal personality of endowment institution" is somewhat unknown due to the absence of explicit legal texts; except the Oman's law of endowment (article 2 issued in 2000) that grants a legal personality to the endowment. Considering the laws of endowment in the Islamic countries, it can be discerned that these regulations do not express the responsibilities of the proctors for administrating the endowed properties in most of the countries unless in some countries like Yemen (articles 83 and 84 of the endowment law). While the Omani legislator has just defined a civil liability for the proctors in case of default or negligence based on article 20 of the endowment law, it has fallen short of presenting any explanations regarding the extent of negligence and its type.

COMPARING ENDOWMENTS IN IRAN AND ARABIC AND MUSLIM COUNTRIES

Endowment is a good and pleasant tradition rooted in civility and it has been existent in the two civilized societies of Iran and Egypt. Based thereon, Egypt can be considered as one of the successful countries in this regard because this country has been able to form a coherent system for endowments through precise investigation of the various countries, religions and creeds. The discussions on the retention in the endowment contracts is one example of such a success for this condition could resolve many of the problems existent in the society and because the people with low financial affordability and the others inclined towards helping their fellow human beings found a chance to apply the contributions for resolving the country's problems.

Our country, as well, should maximally take advantage of all its existent capacities in this regard so as to be able to make a good use of this provision and overcome the problems. As a specimen, this same condition of retainability and returnability of the endowed properties can be effective in encouraging the people to make endowments and increasing the number of the endowed properties that can be subsequently put into favorable uses and their revenues can be applied for the reconstruction and development of the country's infrastructures and many of the society's economic and social problems can be consequently resolved.

COMPARING ENDOWMENTS IN IRAN AND WESTERN COUNTRIES

Though similar in some respects, endowment and trust are also different in some aspects:

- A) Endowment is generally conducted with the intention of getting closer to the vicinity of the God but trust is laid on the foundation of mere benevolence or personal thoughts about properties. In the meantime, trust is predominantly carried out within the format of testaments after the death of the property owner.
- B) If trust is considered as a sort of contract, there would come about a difference from the perspective of the opposite party between these two provisions because the opposite party of the

⁴¹ Mireille Le Guen, Élise Marsicano, Nathalie Bajos, "Resources for A Union, A Union For Resources: Union Formation And Living Conditions Among Subsaharan Migrants After Their Arrival In France," 34 *Revue Européenne Des Migrations Internationales* (2018), 78.

⁴² Lens gilles huchette, *La fondation de france sollicite vos idées pour améliorer le territoire* (2016), 67.

⁴³ Ahmad Fat-hi Zaghoul, 94.

⁴⁴ The office for the repair and maintenance of the endowed properties, Jeddah Publication Institute, 143.

trust is the trustee or the proctor and the opposite party of the endowment is the donee.

- C) In the special endowments, the donees are the owners of the interests of the endowed properties; resultantly, based on its being a contract in nature, endowment should be accepted by the other party while ownership is dissolved in trust in such a way that the trustee is the property's legal owner and the interested party is the equitable owner, the ruled owner and the real owner thereof but the trustee has to accept it not the interested party; in other words, the interested party has no role in the creation of trust. In the meanwhile, the ownership of the exact property can be transferred in some types of trust to the interested party.
- D) In endowment, the exact property is retained meaning that it cannot be transferred and its interests can be spent for the God-like and charitable affairs but, in trust, the exact property is not retained but its persistence can be set as a condition and the entrusted property's use for charitable affairs forever and the enjoyment of its interests for God-like charities can be specified.⁴⁵

CONCLUSION

Endowment is a legal action by which a person (real or legal) completely excludes him or herself from the ownership of a property as well as any sorts of conveyance, including voluntary ones such as various kinds of transactions and natural ones such as inheritance, and other occupations and gets its interests circulated on God-like and charitable affairs forever so that certain and specified individuals or uncertain and unspecified persons can enjoy the interests of the endowed properties gratuitously. This charitable affair has been largely admired in the canonical texts. In a hadith from the great prophet of Islam (may Allah bestow him and his sacred progeny the best of His regards), this action has been introduced as one of the three actions of the "everlasting charities" with its positive outcomes and otherworldly reward blessing the endower forever. Resultantly, it can be stated that endowment is actually the very common alms in its foundation and it has been frequently dealt with and recommended in the holy Quran. These are alms that will bring charitable acts and blessings for a person even after his or her death.

In trust, the owner of a property sets it as a condition as the trust former that his or her properties should be administrated by one or several trustees in favor of one or several persons or a given group or a certain purpose named the interested party. The origin of this provision is in the medieval centuries during which the common law's regulations prevented the lands' inheritance; thus, trust was a way of dodging the common law regulations. These conditions caused the emergence of a more complicated trust provision which is a combination of donation, agency and exploitation.

The trustee is the legal owner of the trust whereas the proctor is just responsible for administrating the trust subject and the ownership of the trust subject is in the hands of the donees. Trustee has the right to sell the trust subject but the proctor has no right to sell the endowed property. Trustee cannot receive a wage in exchange for the fulfillment of his or her duties unless such a right has been stipulated in the trust

deed but the proctor deserves remuneration in case that a wage is not specified for him or her.

In terms of the number of the proctors, jurisprudence and law have not made any restrictions and they also make no difference between the proctorship of the movable and immovable properties while there are differences in trust in terms of the number of the proctors in respect to the type of the entrusted property and its being general or specific. If the trust subject be movable properties, there should be at least one trustee and there is no restriction in terms of the maximum number of them. If the trust subject be immovable property, there should be at least four trustees in specific trusts with no restriction having been set in terms of the number of the trustees in the general trust; however, there should be at least one trustee in both of them. Under some circumstances, trustee can reject his or her appointment for such a position but s/he cannot resign from this tenure following his or her appointment and after his or her own acceptance.

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