



Waqf and Aspects of the Upturn the Endowment

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Original Article:

Received 22 July. 2016 Accepted 25 Aug 2016 Published 30 Sep. 2016

ABSTRACT

Waqf is a good tradition that has long existed in various forms in human history, and also Islam has used it on the clear, logical, purposeful, progressive, and careful track.

When an endower endows one of his properties while he is alive, not only he has served his community, but also he will be rewarded posthumously by God: "... Good Deeds, are best in the sight of thy Lord, as rewards, and best in respect of (their) eventual return." (Surah Maryam, verse 76). Scientifically it can be said that the general principle of equity and fairness, considering the rights of relatives and family members, and necessity of moderation in matters require that endowment of entire properties as not justified.

With the codification of the civil code and assigning articles 55 to 91 to waqf, made the issue as a legal form and with establishment of Endowment Organization, it is managed also under the control of the law and the Government accordingly. The extension of the Government administration for supervision of the activities and the adoption of a policy limiting the private ownership of property, in order to provide different targets, has led to the formulation of laws that consisted the endowments too, the most important of them is to buy the property of endowment and upturning it. The endowment has been a tradition since ancient times between different nations, but in Islam, it has been tending to help poor people and to attend the Muslims' requirements. In this article the author is going to review the sales permit, or upturning it and the basics of waqf sales clearly in order to find the taking optimal advantage of endowments in accordance with the expedient of endowed property as the real intention of the endower to help authorities to formulate appropriate laws.

Keyword:

General Waqf, private Waqf, endowment, upturn, selling waqf, detention of property

INTRODUCTION

Waqf is a righteous enduring deed and is a clean evidence of cooperation and coordination; a donation devoid of grace; a charity free of irritation and humiliation; a permanent and continuous dole, without hypocrisy; a loan without anxiety of repayment, and an expropriation of the wealth with acquiescence and compliance. There is not a verse in Quran directly referring waqf particularly, but one can realize the recommendation and preference of waqf by verses assigned for charity, kindness, and cooperation. On the other hand, human is an eternal being and hates annihilation. In fact, death is a means for transition to the next world for eternal life. Human history shows that even skeptics of God and religion do not consider themselves mortals. In this way, the man loves to leave a name of him behind after death. In Islamic culture, one of the best ways to keep the name of the man is generally the Good Deeds particularly waqf to public charity, which is named as "Durable Good Deeds" in Quran terminology, and the public have been invited to it.

No clear origin can be found for good thought and action. Good deeds have always been present and they will be so from now on. Religions have had programs for it without exception. This is the most appreciated thing amongst the God more than anything else is. You will see how much clear, meaningful, and moving are the Quran verses about charity, donation, bestowment, and serving the people, up to such an extent that the God interprets the good people's deeds as thankfulness and thankful people. It means that the Lord thanks people that spend their divine gifts for God's blessings.

Verses in the Quran assigned to Good Deeds, charity, self-sacrifice, etc. could be incentive for waqf and also in many verses of Quran, the money gathering, multiplexing, pride, arrogance, theft, rebellion, unlawful acquisition, the love of money, kindly rejection of orphans, conceit, etc. are interdicted. All above can refer to the status and value of waqf in Quran.

In fact, good deeds in normal status are part of everyone's life, in all societies, considered as a suitable action. Good deeds are accepted in all societies and they affect community individuals positively, if they are not done extravagantly.

One of the charities is Waqf, which is a known term in all heavenly religions, especially in Islam. Waqf in our country whether for its religious intention approaching the Lord, or economically, is very important so that it can be said that it is one of the means of upturning public something having private property previously, fair distribution of wealth, and preservation of cultural heritage and religious rituals throughout the history. However, detention of endowment property, especially for real estate, has caused part of the national capital stop circulation and negligence of waqf officials, the conflict between beneficiaries has caused this legal, social useful establishment became far from its initial aims and its desired effect stray, and this has caused the destruction of agricultural properties. The problems emerge in selling endowments and exceptionality of "upturn" cases counteract the initial aims of the endower and the legislation wisdom dedicated to waqf and it indicates the necessity to revise the traditional rules keeping its religious aspects. This is while nowadays, charitable foundations and institutions in

the world have taken advantage of two concepts a. "Legal entity" of Waqf establishment and belonging of the property to this character; b. the general concept of the assets and its independence against components asset, have refrained from defects of endowment and the funds have their normal circulation within the foundation. (Katozian, 2000: 48).

Both concepts of "legal personality" and "property" are present in our law. Legal personality of endowment gradually took place and became known in Fiqh and made official by the endowment code. The concept of the overall assets and its being independent of its components as well, which is a branch of the legal character of the property, is today a obvious fact. Therefore, the curious mind come along with this question that having considered the factors of more efficiency of endowments and providing the intentions of endowers and also providing the purposes of Sharia, in the creation and establishment of Waqf and changing it into a profitable firm, why do the authorities resist among the establishment of this new concept and they do not permit the agents or endowment bureau to change the endowments to another more profitable property?

The plan "The evolution of endowments interests upturned" is an effort to make endowments concept close to charitable foundations preserving their religious principles and it can have many economic application. Waqf is an act that all its various unknown aspects should be studied, including the conversion of the endowed property to the best form that can be used to achieve the maximum benefit of the endowed property in the direction of the real purpose of the endower by researchers, so that it can be used in communities more.

Typology of the concepts of upturning the endowments

The definition of Waqf

One of the leading legal establishments of Islamic Law is Waqf that indicates the desire and wish of human being for eternity. In this legal transformation, private owning dwindles in favor of social benefits (whether less or more) (Katozian, 1993: 62) and new ownership arises through the birth of a new legal entity.

In Persian language and literature "Waqf" means "standing", "holding", "making exclusive use of something for someone" (Dekhoda, 1993, under the term Waqf), "scrimping" and "stay off" (Moein: 5047). The original Arabic term means "to stop," "to stand," "to lock up" (Zuhayli, 2002: 7599).

In law and Fiqh, legal action of Waqf is not far from those literal meanings; (it means "keeping" and "preventing" everywhere). (Katozian, 1990: 116). Definitions provided by Shia scholars usually are the same (Waqf is a contract to save the main property and leave the profits) and (Mohaqeq Helli, 1986: 422) or (saving the main and let the profit go) and (Mousavi Khomeini, in 1988: 511) and (Shaykh Tousi, Bita: 286) or some others, i.e. (Helli, Bita: 7) and (Shahabi, 1992: 78), has said (Waqf: good to save the main property and give up the profits) or (detention the main and give up the fruit) and (Khoi, 1990: 511), and (the reality of waqf is detentopn of the main and let the profit or the fruit go).

The owner devotes his property or asset and his aim is to use its profits for charity. In Sunni jurisprudence, Waqf has also been applied so close. According to Hanafi, Shafi'I, and Hanbali, waqf is detention a property that apart from its presence, it could be financial profitable. In this term, the

property is endowed as the property of Allah, and the endower is prohibited from possessing it. However, in this sense, the property is bailed as a property of Allah and the endower is prohibited from possessing it. Nevertheless, in this order, detention means detention of the main property and is subject to owned property (Zuhaily, 2002: 7601).

Nevertheless, Abu Hanifa considers Waqf as the detention of the asset itself and charity its interest in the good way. In this sense, waqf can be owned back and the endowment can be sold by the owner. (Zuhaily, 1994: 153) and (Malakoutifar, 1997: 141). Article 55 of the Civil Code of Iran has defined the vision of the Shiite about Waqf as "waqf is the detention of the asset and its benefits should be endowed as charity." In this article, the term detention means that the owner abnegate his ownership and by the term endowing as charity, it means the interest of the asset should be used as charity for the sake of Allah's favor or should be devoted to particular individuals in a way that the owner make prohibited from controlling or having ownership power such as selling it. (Shahabi, 1992: 79) and (Emami, 1989: 70). In this way, the transfer of ownership of property by the founder or by the others (albeit the beneficiaries of the endowment) and even the trustee of the endowment is prohibited except in special cases, and they have not ownership of the property anyhow.

Losing the asset, partly or entirely, by endower or the others is not possible, the endowment cannot be inherited to others... (Jafari Langroodi, 2001: 197). Regarding the nature of the Waqf (it is being an Iqa* or the contract), its relation, unity, or difference with other concepts such as charity and detention (usufruct), the features and purposes of the waqf, necessity or lack of necessity of reviewing the comments and regulations dedicated to waqf, and being religious or not, there are numerous and complex debates among religious scholars and lawyers that entering into this does not make sense to the purposes of this study.

(Waqf is detention the asset and releasing the interest. Waqf is keeping the original property or money and dedicating its profits. The roots of detention and its meaning in Persian or Arabic as "Tahbis" is equal to the terms "detention", "locking up" and "forbidding freedom of something". It is because by endowing something, the freedom of transferring it to somebody else is forbidden (Tousi, Almabsoute Fi-el-Fiqh, 1030 AD).

Religious scholars have considered waqf as a form of charity donations. General goals that can be achieved in waqf are: to help poor people; help the disadvantaged; improving the lives of poor; economic restructuring the level of people's lives; dissemination of knowledge, culture, and education, particularly education of Islamic teachings and religious principles; building a mosque, Husseinyes[†], libraries, schools, hospitals, shelters, community centers, and to run them; to create and build roads and bridges; etc.

On the other hand, waqf eradicate greed and secularism; nurtures contentment and altruism. Waqf alters conflict and snobbishness with cooperation and coordination. Waqf makes a community full of love, altruism, and excellence; upgrades the level of thoughts, and the income of the

endowment would water the thirsty people and will make passengers rest under the shadow of goodness.

As it is clear, the purposes of waqf are not limited to the poor and temples, but also public purposes, such as construction and managing scientific centers and hospitals, and so on.

The definition of upturn

Upturn means to turn something into something better to change one thing for another; as in endowment, when the property is going to be damaged and collapse, they sell it and buy a better property instead. Upturn is to turn something into something better, replacing one thing for another, as the endowment property, which is going to destruct, get replaced with a better property.

The conditions of upturn the endowments

Principally, selling the endowment is forbidden because there is a legal rule stated, "Nothing can be sold unless it is owned." This is while the endowment is not owned by the endower after waqf and it will have legal personality. Some others justify lack of possibility of the sale of endowment property. They explain that one of the conditions of possibility of the sale of a property is its being halal. When the property endowed is a detention of property, so this condition is not met to make it possible for sale (Khazaeli, 2000: 138).

- I. The legislator by the way has permitted selling endower property in some cases. These conditions are stated in Article 88 of the Civil Code:
 - a. If the property is damaged or the runner might afraid of it causes to be collapsed in such a way that may not be possible to benefit from it.
 - b. If the reconstruction would not be impossible or there would not anybody willing to reconstruct it.

If both of these conditions were available, the legislator allows to endowment be sold; in the case, the money should spend for buying a property as close as the aims of the endower. Therefore, it seems it would not legal to divide the money between the beneficiaries, even if they would need it drastically.

- II. The legislator also points out that if not selling property may cause somebody's blood be spilled (a Muslim be killed), it can be sold.

The circumstances of upturn and its legal effects

As noted above, if the endowment is going to be damaged or there is fear of collapsing it so that that was not be profitable, the only condition that selling endowment is permissible when its repair is impossible for any reason, or nobody is willing to repair it. Since the wish of the endower for the endowment is its presence and using its profits, therefore when using the endowment for profiting is impossible because of its destruction, and the purpose of the endower is lost and thus, there would not be the hope to exploit the endowment anyhow, and it would not possible to repair and restore it through loan, other benefits, or by the help of benevolent, it will be gotten upturn under certain conditions (Article 88 of Civil Code). This issue is referred to in other articles of law, but they are not necessary to be mentioned. Moreover, it must be said if the endowment were sold under the legal requirements, the seller(s) must replace it with a property and use it as the will of the

* Iqa is a unilateral act that the other party can only accept it by performance.

† Husseinye is a place for morning for Martyred Imam Hussein

endower. As can be seen, one of the key principles of endowment sustainability is availability of strong and unshakable legal elements for Waqf and this has led to some endowments remain in Iran for more than seven hundred years while private and public properties have been subject to the hundreds of interactions many times. However, if endower set up a fundamental condition for the upturn, the endowment might be useful more in the long-term period.

Certainly, when the collection of interest on endowment is intended in order to meet the purpose of the endower, it will be done through exploiting it as convenient while retaining the endowment itself in a good condition. The trustee is obliged to rent the property or use it through has a duty to rent, or use it directly or by applying a steward, for utilization the property.

It is obvious that renting the endowment, the Property Owners and Tenants Act must also be observed. In addition, if the endowment was a particular one, its usufruct should be prioritized for beneficiaries first, and if it was a public endowment, the tenancy relationship will not disappear with the death of trustee. The Article 499 of Civil Code states:

"Whenever the trustee rents endowment with respect to spending its financial profits for beneficiaries, the contract will not be revoked after his/her death."

The upturn from a management perspective

The upturn issue could be reviewed considering two aspects of retaining the endowment and the creation of income or profit from management perspective.

If the endowment destructs due to any reason or its maintenance will tend to a condition, which will cause collecting its interest become curtailed, can we upturn it literally or idiomatically whether it by sale or replacement?

It is clear that if the purpose is the literal meaning of upturn, in these cases even when only the profit is endowed, upturn not only would be proper but it is considered as the duty of the trustees in the event of destruction of the endowment. Nevertheless, if the purpose was the sale and replacement ("Ebdaal" and "Estebdaal" as in Arabic), it is permissible solely in profit endowments observing the principle "The closer is closer."

This is considered in Articles 88 to 90 of the Civil Code.

Imam Khomeini does not permit the sale of public endowments or particular ones with general wish (like spending in favor of poor), unless in the special cases like destruction or it is being useless so that profiting from it become impossible, as when its interest become close to null, in condition that the case is not possible to return to its previous condition anyhow, as mentioned before. And also on the case the trustee assumes that if the endowment sold, the property can be bought by the money will have profit as much as the original property (null or very little), then again the selling the endowment is not permissible.

Furthermore, we read in execution regulation for the Organization and Powers of the Endowment and Charity Affairs Act:

"The trustees are obliged to implement the Article 6 of Organization and Powers of the Endowment and Charity Affairs Act and ..., in maintenance and prevention of destruction and decommissioning, and repairing the endowment so that its incomes grow every five years as considerable as in the common law."

The law has also made the trustees obliged to observe the growing trend of income of endowments obviously inspired by the religious principles that emphasize much on respect of maintaining the good of the endowments and its vitality.

The transparency issue in running the endowments is very important from the view of creation of value and appropriate revenue, because having explicit and clear and reliable reports of the performance or management available regarding the gaining income and its distribution could not only be used as a base for evaluation managers, endowments, and decision-making regarding the dismissal, retaining, or adding trustees for endowments, but also it makes the gaining income and paying attention to the value of the endowments under management of the trustees under control of the state authority. It could finally be a means to increase the benefits of the endowments on the one hand and increasing their life and prevent the gradual atrophy of endowments on the other hand. Therefore, the principle of admittance about continuous profiting of the endowment is making clear the financial status of endowments ranging from inventory to their revenue and costs.

The upturn from the people point of view

Appropriate income means changing the income into better one or to something more profitable, which in contrary to our argument in retaining the endowment property itself, it does not apply in any way in waqf principles (using endowment), since the original endowed property "could never be sold, donated, or transferred to the heirs of the endower."

However it differs in the case of endowment interest, so that the above-mentioned rule is altered that "it should not be sold as the other properties" (not absolutely). It is because there is permit for the upturn in legal cases of Sharia regulations and the trustee is free and have many powers yet he/she has many rights already as all other trustees but he/she cannot treat it like other freehold properties under his stewardship.

1) He shall comply with the good of the beneficiary of the endowments.

2) He shall spend the price obtained from the sale to purchase other properties and make possible the use of the second property without the need for an endowment vocal contract ("Siqe Waqf" – a vocal contract with God added to Muslim's good intention) and it will be replaced for the first endowment.

Selling the endowment is allowed observing the conditions above (of course in the case of legal permission is available for the upturn) and selling the endowments as mentioned is completely equal to the upturn.

General conditions of the upturn

Public waqf is a kind of waqf that is about the public interest, such as mosques, schools, and so on. Public waqf has whether a general direction and considers public interest in mind, such as dedicating the mosques, bridges, and schools, or includes a general name, like the poor and orphans. In other words, it can be said that when an owner endows a viable movable asset or a property for public usages and public interest, it is a public waqf.

The difference between public and specific endowment

1. The difference in the beneficiaries of the endowment. In public waqf the beneficiary is non-enclosed and various, but in specific endowment beneficiaries of the endowment is enclosed so that it may be dedicated to children but in public endowment it is dedicated to common people from the community.
2. The difference in determination of the trustee or not. In Public waqf if the trustee is not mentioned, the running of the endowment is dedicated to the religious governor (Endowment authority) and we the beneficiary never has the right to intervene against, but in particular waqf, if the trustee has not been determined, the beneficiary can run it by himself.
3. The difference in the intention of the endower. The endower usually doing public waqf intends for common use for morning, religious acts, and so on as for public use, but in specific waqf the endower often has determined the name of the beneficiaries in his mind as enclosed and limited to specific people. Usually in specific waqf, the beneficiaries are of the children, descendants, heirs, or family members of the endower.

Special conditions of the upturn and property division

Specific waqf is a kind of waqf that has defined beneficiaries as specific individuals like children and grandchildren. For example, the owner endows an asset, immovable or movable, viable property in order to his children take advantages of his property benefit that is called specific waqf.

In a sense, waqf is divided into the usage or the profit. For example, if an endower endows his land to be used for construction a school or endows his house for building a Husseinye, then it is waqf for usage. Meanwhile, when an owner endows some shops or a garden intending the trustee gains the income and spends it in the favor of the orphans, for morning for Imam Hussein, or for patients' treatment, then it is a waqf for profit.

In terms of Endowments Act, those endowment holdings are administered by trustees it is non-possession waqf. However, when the endowment is managed by the Endowments and Religious Charity Affairs Authority on behalf of the trustee, it is referred to as possession waqf (Jafari Langroodi, Property Laws, p. 242).

Legal effects of the upturn

Waqf is a good tradition. We have many religious traditions emphasizing good deed. Legislator has tried to amend the existing rules and procedures, gain maximum satisfaction of endowment practitioners in the country.

A lecturer has stated about renting an endowment property that since the endowment cannot be sold or exchanged, renting is the best way to make benefit from endowments. So theoretically, there is no doubt about the authenticity of rent endowment property.

Shia scholars have accepted endowments rent. Civil Code, in Article 499, has confirmed the authenticity of the endowment. Article 32 of the amendment recognizes that reform. What is a subject to argue is the person who is allowed to rent the endowment. (Katozian, Certain Contracts, Vol. 3, No. 76, p. 482 and p. 390).

This lawyer states about the person authorized to rent endowment property that the doubt is about the person who

is allowed to rent. That is, the lease is a kind of possession against a defined interest of it. Hence, as Article 473 of the Civil Code stipulates, the lessor must be the beneficial owner. This general rule is subject to waqf assets too. Thus in endowments, like any other property, the person who is the beneficial owner, can rent the endowment. So the central question is who is the beneficial owner of the endowment? There is no doubt that with waqf, the property possession is terminated from the endowment property. Then there are only two persons that one of them can be considered as the owner of the property. One of these two individual is the trustee. There is no doubt that the trustee is only the administrator, not the owner of the endowment, but anyway, renting is a kind of administrating. Thus, appealing to the representative theory, renting authenticity is justified by the trustee.

In fact, the other person is the beneficiary. The main consideration is possession of the endowment by the beneficiary. By searching Shiite jurists' literature, we will be able to find out that we should deal with three different theories. Some people like Sheikh Tousi believe that the ownership of the endowments and their interests belongs to beneficiaries. Others, like Sheikh Ansari, dividing the endowments possessive or non-possessive, believe that beneficiaries own the possessive properties.

The third group like Tabatabai has accepted the ownership of the beneficiaries only for the benefits, not for the endowments themselves. However, it seems that the beneficiaries only have the right to profit from the endowment property not to own the profit itself. Consequently, the beneficiary is allowed to rent the endowment only when he is acting as the trustee and representative. Accepting the theory of endowment being as a legal personality, there is no need for such a complex and sometimes far-fetched arguments. Article 3 of the Hajj and Awqaf and Charity Affairs Organization and Authority Act of 1984, expressly stated the endowment has legal personality. As a result, endowment like any other legal entity has its own assets. In other words, the legal entity has the ownership and the benefits of the endowment. So the trustee and beneficiary, if play the role of the trustee, are able to rent the endowment as management act. The regulations of the Act of 1984, gives this right to the trustee, having passed certain administrative formalities (Katozian, Certain Contracts, Vol. 3, p. 259 and p. 285).

Favor of the endowment is mentioned in Article 32 of the amendment. One of these cases is the acts of the trustee that must be in favor of the beneficiary. Despite numerous articles explaining about the favor of the endowment, there is no any clear criteria and standards for diagnosis of whether the favor and interest has complied with or not and in fact, it is a kind of conventional concept. The assumption is the compliance with favor and interest, unless otherwise proven by a claim. However, if we want to give an indication for compliance with favor and interest in endowment (the amount of rent), it seems that the criterion of Article 11 of the "Endowment Regulations" (1986), which limits the renting endowment to getting its expertize prices and holding auctions would be a good benchmark. To comply with favor and interest in renting the endowment for over 10 years, the physical condition and the status of beneficiaries must be considered. For example, it may in a

condition so that nobody is found to be willing to rent it for less than 120 years.

Generally, there cannot be provided any consistent criteria for complying with favor and interest. In fact, observing the favor and interest could be in a wide variety, one of which will be explained below. Therefore, for the same reason, the legislator has put it in the hands of the trustee, of course with awareness of the representative of the Vali-e-Faqih[‡] in the Endowment Organization.

Rental endowment property

Leased through auctions

Because of the importance of endowments, in cases where renting is required and in order to comply with the favor and interest of the endowment and exploiting it, the legislator has provided that the endowment should be rented through auctions. Article 11 of the Act of Organization and Powers of Endowment and Religious Affairs Organization states, in order to comply with the favor and interest of the endowment and proper utilization of it, it shall be rented through auction under provision of the Waqfname[§] and relevant laws having gained the local expert's vote.

For this purpose, the auction ad for the lease of the endowment will be published by the local Office of Endowment and Religious Affairs. All above-mentioned conditions explained in Article 11 must be inserted in this ad; in addition, it must contain the information about the identified endowment property (such as the location of the endowment, its details, and quality). As it was completed, the ad must be published in one of the widely distributed local newspaper in charge with the endowment. A date should be specified for opening the applicants propositions in the ad. Of course, the date should not be less than 15 days and more than 30 days after publishing the ad (Note 2 of the aforementioned Article 11). To address the propositions, a commission should be established consisting of officials of Endowment Organization, the representative of local Economic Affairs and Finance Bureau, and the trustee. This commission is called "Auction Commission." If there is no trustee, the representative of the Chief Justice of the city will take participation in the commission on behalf of the trustee (Article 14 of the aforementioned regulations). If after the publication of the ad, there would not be any proposition received, or received propositions are opposed to the favor and interests of endowment, the auction will be renewed. In other words, the auction will be advertised with same conditions and contents again for the second time. In the event that after the second ad, the auction fails again having received proper there would no proposition, or proper proposition complying favor and interest; therefore, the final decision will be determined in this case by majority vote of members of the commission (Note 1 of the foregoing Article 14). If the propositions received have equal conditions, in this case, the winner of the auction can be determined by the majority of the commission members (Note 3, Article 14). Here it should be noted that in some cases auctions could be done by attendance of applicants. That is, applicants gather in the determined location without making offer send in writing in advance and they offer their

propositions. Note 2 of the mentioned Article 14 states that in the case visiting the garden having tree with their fruits might be good for renting the endowed, the sales process could be made limited only for one season and the auction can be conducted by attendance of the applicants according to local convention with a local expert or experts be present. Generally, renting endowments are conducted through auctions. Nevertheless, the legislator has not made it mandatory to conduct auctions for rental. The following exceptions are counted on the conducting rental auctions for the endowment:

A) In the case of endowments that their annual income do not exceed two hundred thousand Rials (6 USD), auction is not mandatory in condition that the rent cost is determined by an official expert or a local expert according to the fair rate. ("Note 1 of Article 11 of the Rules of Procedures of Endowments and Religious Affairs Organization).

B) There is not need for auction is not mandatory for land endowments granted for training, health, administrative affairs, and so on to the ministries and institutions affiliated with the Islamic revolution's institutions. In such cases as well, the amount of the rent should be determined based on the official or local expert's opinion and based on a fair day rate (Article 13 of aforementioned Regulations).

C) In other cases, observing endowment favor and interest with the approval of the head of the Endowment Organization and based on the professional opinion of official or local expert and based on fair usual rates will no longer be required for tender (Article 13 of aforementioned Regulations).

Conclusion

Laws on endowments have basically been affected by the state-owned land policies. Different rules and regulations approved at different times have been mentioned. Waqf property sales processes are predicted in Civil Act, in certain cases of which the sale is admitted. However, when efforts have been conducted to renew the ownership, since there would not be enough land to distribute among farmers who had documents in the first phase of in the implementation of the agrarian reform law, hence, at the beginning the specific endowments and then public endowments were relieved from waqf and sold to farmers.

After the revolution, efforts were made to revive endowments and numerous laws have been passed in this regard. Implementation of these laws in order to revive endowment has created its own problems. Since most of the lands consecrated were in small parts, the implementation of regulations required all of them be revived as waqf. As a result, the question has been raised in mind that whether the return of all the lands assigned to waqf is right while even if the endower's intention might have been observed as the upturn in some way? The answer requires studying the rights of selling waqf property in Islam rights and for this, Islamic law are cited, for different reasons of consensus, tradition, and reason.

As the consensus, citing consensus quoted from Sheikh Tousi and Ibn-Zohre, sale or conversion of endowment in some cases are allowed and opposition from some people, such as Ibn Junaid, has been considered as not credited because of his attention to mentality and being rare.

‡ Guardianship of the Islamic jurists

§ Waqf Scheme written by the endower

According to Prophet's tradition, the tradition explicitly states that the sale or exchanging the endowment is allowed, under the provisions for preventing the endowment against destruction, and keeping their interest.

Our most important discussion is based on the intellectual arguments based on common sense reasons as follows, sales and upturn not only permissible, but obligatory in some cases.

If the interest is in selling, preventing from it is equal to the extravagancy.

If the interest is on selling, thereby preventing from it will be against the intention of the endower.

If retaining the endowment from selling will be equal to less income, given the amount of investment in some cases, low interest is equal to the loss.

If retaining the endowment from selling will have consequences such as strife, conflict, and life risk in the following, securing people and preventing them from being enemies is prior to financial interests.

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