



## Legal Review of endowments transfer

*Esrafil Amani Isalu<sup>1&2</sup> and Ali Reza Lotfi<sup>2\*</sup>*

1. Department of Law, Ardabil science and Research Branch, Islamic Azad university, Ardabil, Iran

2. Department of Law, Ardabil Branch, Islamic Azad university, Ardabil, Iran

**Original Article:**

Received 02 Dec. 2016 Accepted 30 Dec. 2016 Published 30 Jan. 2017

### **ABSTRACT**

The endowment is the Islamic tradition, according to which, the original property, or its interests will be given as a gift for the public service for the good and pleasing to God. The Iranian Civil Code has received the issues relating to endowment from the Shiite resources. One of the major challenges in endowment property is the permit or not to permit to transfer it. In this paper, this important matter has been examined from three perspectives of rentals, sales and becoming the best. The principle is that, the endowment property cannot be sold, except in special circumstances, such as in the event of endowment property damage, fear of the deterioration of the property, to the extent that, there is no possibility of restructuring (Article 88 BC). In addition, when the difference between the beneficiaries of the endowment will be so serious that there is a likelihood of bloodshed (Article 349 BC), the property can be sold. Also, some of the rules and principles that govern the lease, include being exchanged (not free) (Article 490 BC and Article 11 of the Executive Regulations of Religious Endowments), having time (Article 468 BC and paragraph (d) Article 11 of the executive regulations of religious endowments and paragraph 2 of Article 32 of the amended executive regulations), attracting the attention of experts (top Article 11 of the executive regulations of endowment), auction (paragraph 3 of Article 32 of the Regulations Act of endowment), receiving rent with today fair rate (Paragraph 'h' Article 11 of the executive regulations of endowment) and set a formal lease (paragraph "g" of Article 11 of the executive regulations of endowment). By assuming to prepare to sell the same Endowment, due to the conditions stipulated in the laws and regulations of the Endowment, in the consumption of price and the proceeds from the sale and the sale of endowment, we must act according to the law, that operates in this manner is usually "become the best" (Art. 90 BC).

### **Keyword:**

*Parenting  
Endowment,  
Endowment  
properties, transfer,  
lease, sale, becomes  
the best*

\* Corresponding author: *Ali Reza Lotfi*

Peer review under responsibility of **Iranian Journal of Social Sciences and Humanities Research**

## INTRODUCTION

The endowment is the most effective means of social interest, and it is as an institution that makes the continuation of donations possible. The privileges of Islamic law are encouraging Muslims on social interests, encouraging them in the charity for charitable works and poor relief. In addition to being common among different nations in ancient times, in Islam, it gained more importance because of the emphasis in the Koran and tradition, so it is discussed and scrutinized by the jurists and the different aspects have been under the rules and principles of jurisprudence accordingly (Shiri Shirvani, 2011: 42).

With the development of civil law, and assigning the articles 55 to 91 to it, the Endowment was formed as a legal foundation. With the creation of the Endowment organization, its management under the control of law and government, the expansion of government activity in monitoring of property and adopting a policy to limit private property, in order to meet different objectives, led to develop laws that included endowments. The most important of them are supervising the sale of endowment property and becoming the best. The endowment has been common since ancient times, between different nations, but in Islam, the weak and the poor, and the attention of Muslim to charity have been considered. In the manner that, in this paper, it has been tried to examine the issue of a permit to sell or conversion of endowment and foundations endowment sell, clearly. So that by considering the endowment interests, the possibility of optimal use of the endowment within the true intentions of benefactor will be provided to guide the formulation of appropriate legislation in it.

In the sources of jurisprudence and Iranian law, the principle is that, the endowment property is not transferable. In other words, any legal action, which transfers the endowed to others, is not permitted. However, sometimes, there will be conditions and circumstances that are necessary to protect the endowment organization and the interests of beneficiaries of the endowment, the endowment property sales. Therefore, in the valid sources of Jurisprudence and Iran civil law, in exceptional cases, the sale of endowment property is permitted including when the endowment property is damaged, or a severe difference arises between the beneficiaries of the endowment (Mousavi Behbahani, 1994, p. 91). This study aimed to investigate the desirability and possibility of transferring endowments (rental, sales and become the best) from a legal perspective.

### 2. The definition of endowments

Literally, endowment means to stand or stay standing and to rest (Ibn Manzur, 1405 AH, p. 395) and in terms of law, it is a contract that the result is the imprisonment of origin, and frees its benefit (Mohades Noori 1408 AH, vol. 14, p. 47). In other words, "the imprisonment of something from its owner to funds, so that its sale is forbidden, is not transferred with the inheritance and it is not a gift, cannot be sold, and does not give to mortgage or rent and borrow, and so on. In addition, spending the property in a way that the benefactor has set (Mughniyeh, Mohammad Javad, 2002, p. 585).

Article 55 BC: "endowment is that the same property will be imprisoned and the benefits will be dedicated".

Commentator on civil law wrote in the definition that the meaning of same property, imprisonment is keeping the same properties from transport and the possessions that cause loss. Because the purpose of the endowment is the benefit of Beneficiaries of the endowment from endowment property and therefore, it is endowed. The word of endowment in Persian is standing and holding. The meaning of dedicating interests is transferring interests for God and social charity (Imami, 2013, vol. 10, p. 68).

### 2. Forms of endowment

The endowment is divided into general and special, to the credibility of beneficiaries of the endowment. The purpose of general endowment is the charity and it is not for a certain class or categories, such as an endowment to the poor, endowment for students, schools and mosques. In contrast, special endowment is in a certain category, such as an endowment to children or people or a particular class of people (Mughniyeh, 2002, p. 586).

### 3. Transfer of endowments, from a legal perspective

Transfer of endowments can be studied, from three perspectives of rental, sales and become the best that below, it is explained.

#### 3-1. rent the endowments

Rent, as one of the types of contracts, which is common in society and greatly between individuals, is also taken into consideration in endowments, which could be said, a significant portion of income from endowments will be through a lease contract. Considering the rent and the scope of this contract is an undeniable necessity from the custodians and practitioners of endowments, and enough attention should be given to this. In addition to the importance of endowment contract, the provisions, within, are more important, according to the condition. In fact, in the conditions, the interest of endowment should be observed, and should not ignore this important. This view caused a distinguished attention to rent in terms of the Endowment, so that substantial portion of the endowment provisions is dedicated to this subject, and because of its importance, in some cases, permission of one representative Supreme Leader and head of the organization is necessary. Some rules and principles in the Lease will be explained in a brief.

#### 3.1.1. Being exchanged (not free)

Rent is a contract whereby, the rent will be given to the tenant in return, and it is not free, because if it is free, the lease contract will not apply for it anymore. In the third paragraph of Article 490 BC, it has been noted, "Secondly-Rental property must be paid in the deadlines, which, it is agreed between the parties, and if they do not confirm the date of payment, it should be paid in cash." Frankly, it is emphasized on paying the lease and change of the lease contract. About endowments, the general principles governing the lease contract are ruling and because of its importance, the issue is more sensitive.

Article 11 of the Regulations of Endowments Act, said in a statement: "In order to respect the interests of the endowments, and proper utilization, the Endowment should be rented through auction, according to the provisions of Endowments and relevant laws and by attracting the official expert opinion or local expert and conditions below.

- 1) The possible damage should be the responsibility of the tenant.
- 2) Credible guarantors or appropriate collateral must be taken from the tenant to pay endowment rights, evacuation, and its delivery, at the end of the time.
- 3) The right to transfer the lease from the tenant to the other is subjected to the written consent and the trustee and Hajj agencies and donors; obviously, it is required to comply with regulations for the collection and donation.
- 4) The lease term cannot be more than ten years, except with the consent of the head of the organization.
- 5) An amount equal to ten percent of the proposed amount will be taken from proposers as a deposit.
- 6) The least rental property should be mentioned in the auction ad based on expert opinion and official or local expert on fair rates and other requirements.
- 7) The Lease must be formal, and in the cases, that official lease adjustment is not possible, a contract must be set.

### **3.1.2. The term**

If the lease contract, the lease term is not mentioned, the lease contract will be void. Article 468 says, "In renting the objects, the rent time must be specified, otherwise, the lease is void." In the rent of endowments, the same principle is true and if in the endowment property, the term is not listed, the lease contract will be void. In the endowments laws, in addition to the general rules of civil law, certain other principles governing the rent of endowments, which are required.

### **3.1.3. Long-term rental ban**

As mentioned above, based on the general principles of civil law, the lease should have term and the lease, without a term, will be invalid. In civil law, there is no particular order for term, for example, it is not clear that, the meaning of the term is how many months or years, etc., but in endowments, there is no long-term lease. Since, interest of the endowment must be observed at all times, and one of the Trustworthy's tasks is supplying the interest and since the endowment is with the trustee as a trust, eventually, long-term rent must be refused, because, in the long-term lease, the interest and dedication will not be respected. Accordingly, in paragraph (d) of Article 11 of the Regulations and paragraph 2 of Article 32 of the amended Regulations, rent more than ten years, is banned, and excess of ten years must be associated with the agreement of the representative of the Supreme Leader and head organizations.

### **3-1-4. Attract Expert**

In absolute rental properties, referring to the expert is not necessary to determine the rates of rent and the parties jointly determine leasehold, unless the work will be taken to the courts and legal authorities. For example, In the case of pay as the days of capture, that the wage will be determined by referring the case to the Justice expert. However, if the lease is initially signed, the agreement of the parties is sufficient, but in manipulators and endowment-leased property, the law has determined another approach. At the top of the 11 regulations, to the point is that: "in order to respect the interests of endowment and proper utilization, the endowment must be rented through an auction, according to the provisions of endowment and relevant laws and by attracting official or local expert opinion and conditions below. » that the terms considered the matter are mentioned above.

### **3-1-5. Auction**

To respect the endowment and protect its interests, and in accordance with Article 11 of the Regulations, endowment properties will be granted through auction and if it is needed to leave the auction, the approval of the representative of the supreme leader's must be taken. In the paragraph, 3 of Article 32 it is said to close any acts of taste and personal influence in its way.

### **3-1-6. Receiving rent, at a just rate of day**

Among the essential requirements and necessities in the Rent endowments, which should be considered is determining the rent based on fair day rate. In part, "g" Article 11 of the Regulations, it states, "The least rental property is mentioned in the ad auction, according to official expert or experts on local and fair rates and other requirements." Dear scholars, too, have always emphasized that in renting endowments, the just updated rates should be considered to not waste the slightest interest from the endowment. The Supreme Leader, in this regard, said that "the determination of leasehold endowment, must comply with the interest of the endowment and with the just rate and under the charge of religious endowment and will be spent in order to endow" (religious decree No. 28795 dated 1996/01/16).

### **3-2. Sell endowments**

The law has given the permission to sell endowments to protect the interests of beneficiaries of the endowment, except for the following two cases.

1. If, the Endowment has malfunctioned or causes damage, so that benefit from it is not possible. (Article 88 of the Civil Code) The meaning of leading to deterioration is that if, endowment stays to the same situation and is not repaired, eventually, it will be destroyed, although it is still not broken. The impossibility of profit has several forms:

- Ability to use the same endowment is denied, whether it is, not the usability or not. If the endowed is tables and chairs and it will be broken and rotted, so that it can not be repaired and will be used only to burn, and whether it, in no way can be used. If the endowed is a building, which it is destroyed so that it cannot be used unless it is underpinned and repaired.

- Endowment income are impaired that is considered the stolen profit in custom, for example, the endowed is a village that its aqueduct is dried and needs enemas and with the current situation, it cannot be cultivated and only slightly Diem, can be planted.

- Endowment income, because of the damage, is not according to the natural conditions and if, the endowment will be sold, another property can be bought with its price, which its income is appropriate.

Selling endowment, in case of failure or lead to downtime, as mentioned above will be possible when the following two conditions exist:

"First, its construction is impossible and the endowed, cannot be turned into its initial situation, such as the above-mentioned subparagraph (a), that the endowment is the chairs and tables, which are broken and rotten and cannot be repaired."

"Second – no one appears for constructing the Endowment and pay the cost, either, donation or withdraw from endowment income by long-term lease or borrowings and gradually "(Imami, 2013, p. 90)

That Article 88 of the Civil Code says "selling the endowment, if it is broken or there will be a fear of leading to the destruction, so that the utilization will not be possible, it is permissible when the construction is impossible, or no one appears for its construction." in accordance with the above.

The point that must be considered in the sale of endowment is that "If, by selling some endowment, the rest will be fixed, as it is derived from Article 89 of the Civil Code, the same will be sold and by the selling price, the rest can be repaired. Because the sale of some and keep others is closer to the original order, rather than selling all Endowment and buying another property, unless the sale of some property is not possible or cause harm. As small house will be destroyed, and no buyer will be found for part of it or will be sold at a low price, which in this case, all that will be sold "(Imami, 2013, p. 91).

2. Civil Code, in Article 349 of the Civil Code, on the topic of sales, added another point and this is when a difference occurs between the beneficiaries of the endowment, so that, there will be a fear of bloodshed or causes the damage of Endowment. Civil Code, Article 88 of BC considered the inability of profit from selling Endowment. It considered no constraint on the rise of it, so it does not matter that the destruction of the Endowment will be due to natural matters such as flood, earthquake, or drought of aqueducts, or the damage will be the difference between the beneficiaries of the endowment. However, in view of the fact that, by failing to mention the second part of Article 349, it was possible that the meaning of the legislator from Article 88 is when, the endowment destroyed because of the natural events. In Article 349, it stipulates that if the difference between the beneficiaries of the endowment, resulted in the destruction Endowment, it is also the cause of a license to sell endowment. One of the things that the difference between the beneficiaries of the endowment creates a license to sell endowment is when there will be a fear of bloodshed, which resulted in severe injuries that typically leads to death. Otherwise, when differences lead to hatred and waste of money and fighting and small injuries, such as breaking heads and hand, its sell would not be prohibited, because mystics do not consider these things bloodshed (Emami, 2013, p. 92).

### 3-3. Become the best

Assuming to provide the same Endowment sales, due to the conditions stipulated in the laws and regulations of the Endowment, in the consumption of paying and amounts from the sale and the sale of endowment, it must be acted according to the law, and act in this way, is usually, "become the best." Article 90 of the Civil Code, has expressed with stating a general rule, "the same Endowment, about the permissibility of selling, in order to become aware." According to the meaning of endowment contract, which is, by definition of Article 55 of the Civil Code is donating the property and its benefits (will be awarded for the sake of God), the principle is non-sale of endowment property. If, due to legal reasons, the endowment will be sold, they become the best debate comes, that is not possible to sell the endowment and spend to other issues, even the endowed's intention, but, its earnings should be in the course of implementation

intentions of endowed. The price that is obtained from the sale of endowment should be applied to buy the same value and replace own. Article 43 of the Executive Regulations of Religious Endowments states the general solution as, "the price of selling endowment in case of selling license should be deposited in a special account in the bank. With the consent of the head of the organization and in accordance with Article 90 of the Civil Code, another as the same endowment should be bought and its earnings will be used according to the former endowment. Thus, after obtaining the necessary permits and conditions of the sale of endowment, things will be purchased, so that from its income, the intentions of endowed will be implemented. The important thing is that with becoming the best and sell Endowment, there will be no change in intentions, and must be based on the same former endowment.

### Conclusion

In this paper, the requirements of giving endowments were discussed and were analyzed. The results obtained are as follows:

Rent Endowment: some of the rules and principles that govern the lease, include being exchanged (not free), (Article 490 BC and Article 11 of the Executive Regulations of Religious Endowments), the term (Article 468 BC and paragraph (d) of Article 11 and paragraph 2 of Article 32 of the executive regulations endowment amended regulations), attracting the attention of experts (top Article 11 of the executive regulations endowment), auction (paragraph 3 of Article 32 of the bylaws dedicated law), receiving rent day fair rate (clause 'g' Article 11 of the executive regulations endowment) and set a formal lease (paragraph "g" of Article 11 of the executive regulations endowment).

Sell Endowment: The action of endowed, in fact, is establishing an exceptional facility that gives some form of legal entity to the endowment wealth. In other words, the endowment of a property, removes it from the asset of endowed, and prohibits being the asset of others, entry because. Because the endowment basis is the owner will, on leave certain property, by confining it from any transfers (not transfer it to third parties who normally leave through property ownership) and determine the direction to spend its benefits or set of persons (other than itself), to be enclosed or non-enclosed to benefit directly or indirectly from the same. The same is the endowment property, which, according to the above description, since it is based on the imprisonment and not transferred, in principle, it is non-sales. However, the principle of non-sale of endowment property has exceptions like other legal establishment. Iranian Civil Code is recognized two cases as an exception to the principle: one case referred in Article 88 BC and the other is in Article 349 BC. Two articles permit the selling endowment with qualifications such as the possibility of failure and conflict among beneficiaries of the endowment. Article 88 BC: selling endowments, if it is damaged or there will be a fear to be damaged, so that benefit will not be possible, is permissible when its construction is impossible or no one presents for the construction. Article 349 BC: selling endowment is not true, except that, there will be different between the beneficiaries of the endowment, so that will be a fear of bloodshed or resulted in the destruction

of endowment property and in cases, in the context of the endowment regulations.

Become the best: Assuming the same Endowment prepare sales, due to the conditions stipulated in the laws and regulations of the Endowment, in the consumption of an amount and incomes from the sale and the sale of endowment, there must be acted according to the law, that action in this manner is usually "become the best". Article 90 of the Civil Code expressed the general rule and saying, "The endowed becomes the purpose of endowed about selling licenses.

**References**

1. Ibn Manzur, Muhammad ibn Mukarram. (1405 AH). Lisan al-Arab, Volume XIII, Qom, publishing literature Qom Seminary
2. Imami, Seyed Hassan. (2013). Civil rights, Tehran, Press Islamiyah
3. The Executive Regulations of Awqaf and Charity Affairs Organization, 1986.
4. Regulations bill to renew the lease contract and property insurance; 1979.
5. Shiri Shirvani, Reza. (2011). A Comparative Study of dedication, Master's thesis, theology, Tehran University.
6. Mohades Nouri, Hossein. (1408 AH). Mustadrak Alvsayl Beirut Al-Bayt Institute Lahya' Altras
7. Mughniyeh, Mohammad Javad (2002). Ali al-Fiqh ala Almazahib Khamsah, translation Hamid Masjed Sarayi, Tehran, Phoenix Publishing
8. Mousavi Behbahani, Seyed Ali. (1994). Endowment from the viewpoint of the jurisprudence and civil law, a magazine dedicated to the immortal legacy, publications and charitable endowments.