

Research Paper

Feasibility of the Condition for the Revocation of Endowment in Jurisprudence of Islamic Denominations

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Abstract

Waqf (Endowment) is one of the good traditions that has a long history and is known in all religions as an institution that has its roots in moral and human qualities and has a significant impact on various social issues. However, it seems that today people have less motivation to endow their property. Although economic factors have an effect on this issue, many people avoid endowing their property, despite the desire to help others, due to the limitations of endowment rulings, including the impossibility of revocation of endowment in times of need. Using the descriptiveanalytical method, this article deals with the feasibility of revocation of endowment from the point of view of Islamic denominations. The main question is: "Is it possible to stipulate in the endowment contract that if the endower wants to revoke the endowment, he can reclaim the endowed property? In the jurisprudence of Islamic denominations, there are different theories according to the understanding of the jurists about the nature of the endowment contract. The Hanafi, Shafi'i, Hanbali and some Imamī jurists have issued a fatwa according to which the condition of revocation of the endowment contract is invalid, while the Maliki and some other Imamī jurists state that the condition of revocation of the endowment contract is valid. Some other Imamī jurists, considering the condition of reference to be correct, believe that the fulfillment of the endowment is excluded and so the contract is not valid. As a result, examining the approach of jurists of Islamic schools towards the nature of endowment and studying their reasons prove that it is necessary to redefine the condition of durability in endowment, and then finally the validity of the revocation condition would be proven.

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Extended Abstract

1- Introduction

The endowment (*waqf*) is one of the good customs which is as old as the history of mankind. It is known in all religions as an institution rooted in moral and human qualities with a significant impact on various social issues. However, it seems the people's tendency to endow their property has faded in the current period. Individuals mostly avoid endowing their property despite the social concern and helping their fellows, due to the limitations in the endowment rulings, including the impossibility of revocating the endowment in times of need. Using the descriptiveanalytical method, this article deals with the feasibility revocating of the endowment from the point of view of Islamic denominations. The basic question is, "Can it be stipulated in the endowment contract that in the need situation the endower will revoke the endowment and bring the property back to his ownership?" The schools of Hanafi, Shafi'i, Hanbali and some Imami jurists have issued to invalidate the revocation condition and the endowment contract, while the Maliki school and some other Imami jurists have ruled that the revocation condition and the endowment contract are valid. Some other Imami jurists, based on the validity of the revocation condition, consider the fulfilment of the endowment to be excluded and then the fulfilled contract

would be lien. Examining the tendency of jurists of Islamic schools to the nature of endowment studying their reasons and redefining the condition of durability in endowment, this research is going to prove the validity of the revocation condition.

2- Method

Descriptive-analytical

3- Result

By explaining the nature of endowment and a new perspective on the meaning of perpetuity in endowment, it is proved that in many Islamic schools of thought, the revocation condition of endowment does not contradict the nature of the contract.

4- Conclusion

Proving the feasibility of revoking the endowment will result in more effect and efficiency of the endowment in society, based on the jurisprudence of Islamic denominations.

5- Funding

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6- Authors' Contribution

Saeid Zeynoddini, the corresponding author of this article, is PhD candidate of private law.

7- Conflict of Interest

Authors declared no conflict of interest.

8- Acknowledgement

I am sincerely grateful to my faithful wife and I dedicate this article to my dear daughters, Niayesh and Selena.