



## Research Paper

# Jurisprudential-Legal Analysis of Terms and Conditions of Endowment of Shares

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### Abstract

Following the renowned majority the Imāmī jurists who commonly define endowment (*waqf*) as the lien of the object (*habs 'ayn*) and the limitation of its benefits (*tasbīl al-naf'*), Article 55 of the Iranian Civil Code also presents the same definition for the endowment. The word "objective (*'ain*)" necessarily and literally is interpreted in jurisprudence as the properties among material and tangible objects, which are capable of endowment. In other words, properties such as rights, debts, and benefits are excluded from the endowment, for they are not objective and tangible by senses. Therefore, shares of joint stock companies are excluded from the subject area of the endowment contract. Some believe that the meaning of the word "objective" in combination with "objective rights" does not necessarily mean tangible and material property; because in the current business practice, it is not necessary and mandatory to issue shares on the stock sheet, and it will be possible to imagine shares without the existence of a stock sheet. Moreover, they consider the shares to be the same or somehow to be the same based on the relevant laws and regulations. Seemingly, the analysis of the nature of the shares as a newly-emerged and privileged property that has wealth concludes that the condition of endowment of the shares is that the owner has paid the remainder of nominal amount at the time of subscription; because as long as the said obligation is not fulfilled, the joint stock company cannot endow it according to the rules contained in Articles 35 and 36 of the 1968 legal bill. Therefore, the endowment of collateral shares of managers, shares of fixed-term companies, and shares for which the obligation to pay the remaining amount has not been fulfilled will be void. The questions raised here are, "If the price of the endowment shares of the company increases, will this increase also be included in the endowment?" "Does the endowment of a part of the company's shares by the shareholder cause other shares of the company to be considered endowment as well!?" Using the descriptive-analytical method and based on library sources and relevant laws, this research aims to answer the questions and provide a suitable solution to the issue. In conclusion, the increase in the company's stock price will lead to its being considered as an endowment. Additionally, the endowment of a part of the company's shares does not legally cause the endowment of other shares of the compan

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## Extended Abstract

### 1- Introduction

The amount of increase in production in any country has a close and direct relationship with the financial resources of that country, production needs financial support and money cannot be granted without providing the necessary support, otherwise in such a case severe inflation will occur in order to print banknotes without support (Najafi) (Omran, 1400, 30-51) today, commercial companies have a significant contribution in collecting the capital of individuals in the society and organizing it towards productive activities, and the said companies pay them in proportion to the number and proportion of the individuals' investment.

In developed countries, stocks are among the valuable assets of people; Because the shareholders receive interest in return for the amount of share they have in the business company. In today's era, due to the fact that people's real capital cannot be limited only to material capital, as a result, credit property - the most important of which is the shares of commercial companies - constitutes a significant part of people's capital and assets. Knowing the juridical and legal nature of shares, in addition to the theoretical results, has many practical results, one of the most important of which is the examination of the conditions of endowment of shares of commercial companies.

Examining and analyzing the legal nature of shares of joint-stock companies without considering its jurisprudential foundations will be incomplete and will lead to confusion in explaining the nature of shares.

According to Article 55 of the Civil Law, "waqf means that the object of property, imprisonment, and its benefits are forfeited". The jurisprudential definition of "al-Waqf ho tabhis al-ain wa tasbil manfetaha" (Sheikh Ansari, 1379, 127; Esfahani, 1393, 2/242; Koh-Kamri, 1409,

52) is indicative of the fact that the aforementioned article was established based on the texts of Imamiyyah jurisprudence. . By paying attention to the word "ain", it is possible to invalidate a non-objective endowment. Of course, if the endowment is interpreted in this way: "Al-Waqf Tahibis Al-Asl and Tasbeel Al-Thumrah" (Sheikh Toosi, 1387, 286/3; Mohaqeq Hali, 1376, 1/165; Allameh Hali, 1433, 20/113), as a reference to Being identical belongs to the non-waqf, and as a result, non-objective waqf is correct (Mohaqeq Damad and Mehyar, 1399, 1/124; Bayat and Bayat, 1399, 69-70). In spite of this, the jurists who have used the latter phrase in the introduction of waqf have specified the necessity of "certain purpose" for the subject of waqf (Sheikh Toosi, 1387, 3/287; Mohagheq Hali, 1408, 2/167-2 166; Allameh Hali, 1421, 3/311). It is noted that because the purchase is a condition for the validity of the waqf (Article 59 of the Civil Code), the religious waqf is not valid (Sheikh Tusi, 1387, 3/287; Allameh Hali, 1421, 3/311). Also, benefiting from the endowment must be accompanied by its survival (Article 58 of the Civil Code), so the endowment of the benefit of a single person is void; Because its fulfillment is not possible except by depreciation (Shaheed Thani, 1425 AH, 5/319) and this is in conflict with the necessity of confiscating the property of the endowment (Yazdi, 1425 AH, 6/309). For this reason, in jurisprudence, the endowment of food and drinks has been considered invalid (Yazdi, 1425 AH, 311/6; Sobhani, 1438 AH: 104). In any case, the Imamiyyah jurists believe that the endowment property must be the object of collection, so that its survival is not destroyed by the use of the endowment against them (Ibn Idris Hali, 1410 AH, 3/154; Mohaqeq Hali, 1376, 1/156; Allameh Hali, 1413 , 2/393; Shahid Awl,



1410, 99; Mohaghegh Sabzevari, 2/6; Akhund Khorasani, 1413. Based on this, what is the ruling on endowment of shares of joint stock companies? If the endowment of shares is correct, are there any special terms and conditions for its endowment? The answer to these questions requires examining the proofs of the necessity of the identity of the endowment and the nature of the shares. The author has tried to provide appropriate answers to the aforementioned questions through his knowledge of relevant laws, jurisprudential fatwas, judicial opinions, current procedures and legal perspectives.

## **2- Method**

This article will use the descriptive-analytical method and using library resources through data collection and analysis with a comparative approach. In addition to written research works, systems and software will also be used to collect the contents of this research.

Comparative study is a type of research method in which phenomena or theories "that are discussed in this research" are put together and analyzed in order to find points of difference and similarity. Of course, comparative study should not be reduced to explaining points of commonality and difference; Rather, in the shadow of this comparison, a general explanation of the foundations, dimensions, works and consequences of each is also provided.

## **3- Result**

1- Despite the great functions and capacities of the Waqf institution in solving the economic problems of the country, according to a narrow and apparent interpretation of the necessity of "identity" belonging to the Waqf, today the Waqf of many properties, including the shares of joint stock companies, has become doubtful.

2- The endowment of shares is directly related to the nature of shares, several opinions have been expressed regarding the nature of shares, including that shares are an objective right. The second one is a religious right and the third one is a general right. According to the opinion of famous jurists who believe that the endowment property must be "objective", the endowment of shares is justified on the assumption of its objectivity; But on the basis of religion or general responsibility, it cannot be considered permissible to endow shares.

3- The findings of the previous research indicate that the shares of commercial companies can be considered as a "premium new asset" and it will be possible to endow it if the nominal amount is paid during subscription.

4- In case of increasing the capital of the company through the profits from the endowment shares, as long as this increase is not divided among the shareholders, or the trustee or the endowment increase the capital, in all these cases, the capital increase and the amount of shares are considered part of the endowment, and it is possible to transfer And there will be no transfer.

5- Endowment of a part of the capital and shares of a joint-stock company does not require its spread to other company properties; Because by buying shares, a person acquires ownership of the stock certificate (as a definite asset and a concrete right) and has the right to transfer it to the amount of the nominal amount written in the stock certificate, and if the shareholder decides to endow the shares Kand himself, in fact, has donated the profits from the company's assets that belong to him.



#### **4- Conclusion**

Despite the great functions and capacities of the Waqf institution in solving the economic problems of the country, according to a narrow and apparent interpretation of the necessity of "identity" belonging to the Waqf, today the Waqf of many properties, including the shares of joint stock companies, has become doubtful.

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