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**A Comparative Study of Reversibility of Waqf (Endowment) in Iranian
Law and Common Law with an Eye on
Imam Khomeini's Jurisprudential Thought¹**

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Introduction and statement of the problem

Research Paper

The reversibility of the endowment under cases such as the cucumber requirement is one of the important cases that can allocate the need for the endowment and cause it to falter; Therefore, the issue to be considered in the endowment as a civil institution based on jurisprudence and law, which has a significant effect in preventing the accumulation and concentration of capital and finally the institutionalization of social justice, is that a knowledgeable person may, after endowment of his property, following events such as economic failure, from Losing property, etc., will be in need of the endowment property more than the endowment, so that if he does not succeed in returning its ownership to himself and the property is still as endowment, the life of the waqf will be disturbed and it will cause many problems; Therefore, a discussion under the title of "reversibility of endowment" should be raised among the owners of the art; In the sense that, for example, is it possible to include a condition in the endowment contract for the waqf person to return the endowment to his own property after he has an urgent economic need for the endowment property? Is it possible to stipulate these conditions in such a contract (with a unique legal nature), only in the presence of the donor's financial need and his strong need for the endowed property, or vice versa; Does the waqf person have the possibility to refer to the

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waqf property if he does not need it? In other words, doesn't the reversibility of the endowment conflict with important elements such as confiscation, approval and disclaimer in the endowment? Therefore, what will come after examining the concepts related to this research is examining the reversibility of endowment in Iranian law, then examining Imam Khomeini's view on it, and finally comparing the trust institution as a similar institution in common law with the jurisprudential and legal theories presented.

Research background

Issues related to the reversibility of endowments among jurists and jurists in books such as the book *Nahayah Al-Ahkam* by Sheikh Tusi, *Saraer Ibn Idris*, *Al-Maqnaqah* by Sheikh Mofid, the book *Waqf and Al-Farq* by Dr. Jafari Langroudi, the book *Jame Al-Madarak* by Ayatollah Khansari, the contracts of Dr. Nasser Katouzian (vol. 3) and the works of others are stated in a brief and non-detailed manner. Other researches that are close to the subject of this treatise are as follows: 1. Reversibility of binding endowment in Iranian jurisprudence and law 2. The condition of reference to endowment in Imamiyyah law and jurisprudence 3. Conditional endowment in Iranian law and Khamsa schools. 4. The principle of freedom of contracts in the endowment contract. 5. Jurisprudential and legal review of new endowment issues and its economic, social and cultural effects. 6. Legal study of reference in gift, endowment and mortgage contracts and the effects thereof. 7. Specific endowment in Iranian civil law and its comparison with trust in English law.

As it can be seen, a work that has researched this issue separately and in detail in the form of an article, and all the opinions and reasons for the agreement or disagreement of the experts with a critical view and in an analytical way have been considered and expressed. and examined its foundations using jurisprudence rules such as the rule of beneficence and... and on the other hand, it examined the points of commonality and difference with similar institutions in common law, and based on this, a new theory raised in this issue, it has not been written. It should be noted that in recent years, no research has been done in common law that is effective as a result of this treatise, and therefore, in this article, first-hand and older sources have been cited and used.

Research Methodology

This article is based on the analytical method and all the desired materials and information are collected by studying and considering legal and jurisprudential books, if there are articles related to the subject, legal and jurisprudential software and other sources, and after checking the issue The results are mentioned in different sources. Therefore, the data collection method is a library.

Discussion

From what was said, these results are obtained:

The return of the waqf property to the owner of the waqf when he needs it is valid and effective; Because the reasons for invalidity of these conditions were examined and criticized in detail and their weakness was clarified. It was also clarified that the necessity of conditions such as honor, tabid and the intention of closeness in endowment is not certain and some famous jurists have not considered these cases as an inseparable part of the nature of endowment and have necessarily issued rulings on the permissibility of such conditions when needed. Therefore, permanence, honor and the intention of closeness are not part of the requirements of the essence of waqf, so that the requirement of choice and as a result, the possibility of returning from waqf is in conflict with it, but it is necessary for the application of waqf, so in Shia jurisprudence, there is no valid reason that waqf is not conditional. It was also discussed in detail regarding the validity of the endowment or the validity of the endowment, and it was found that the lack of inclusion of the cucumber condition in the terms and validity of the endowment is not a defensible promise, and its validity is a priority; Therefore, the requirement of the mentioned conditions will be correct at the time of need.

1. In Imam Khomeini's opinion, as long as the waqf does not need the endowment property, the endowment is valid, and at the time of need, he can refer to the endowment property and end the endowment. On the other hand, considering the necessity of the intention of closeness and permanence in the endowment as a condition for the validity of the endowment, which are a reason for those who believe in the theory of the impossibility of returning the endowment, according to them, the returnability of the endowment does not face any obstacle.

2. Regarding the return from the trust in common law law, it is also worth mentioning that it is permissible to require such conditions in the trust, considering the non-objectivity of the element of coercion in it, as well as the nature of the said legal entity, as such, the analysis of the said legal entity due to its absence In Iran's legal system, it should be described according to English law, and since in the legal system of this country, there is no obstacle to include such conditions in the trust, therefore, the theory of the permissibility of stipulating these conditions under the trust should be accepted. Therefore, even if there is no subsequent need for the trustor regarding the property of the subject of the trust, it is correct to include such conditions in the trust without facing any obstacles.

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