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An Analysis of Validity and Invalidity of Equal Co-partnership, Its Criticism and Analysis in Jurisprudence of Five Schools of Islamic Thought, Imam Khomeini's Opinion and Iranian law

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Research Paper

The the Mofaveda copartnership is one of the contracts that the jurists of quintette schools have examined in terms of validity and invalidity. The history of examining this contract dates back to Sheikh Tusi, and many jurists who have entered into the discussion of corporate contracts have also explored the Mofaveda copartnership. But so far, no independent research has been done regarding the viewpoints of the quintette schools regarding this contract in a comparative way. This research is done in a descriptive, analytical and comparative method with the explanation that due to the difference in the definition of quintette schools, first the definition of each school is mentioned separately and then, in order to check the validity or invalidity of this copartnership, the arguments of those who believe in each statement have been examined.

According to the definition of Imami jurists, Mofaveda copartnership is a contract that causes two or more people to share in any money they earn and also causes them to share in any compensation that they are required to pay. Imam Khomeini gave the term definition of a company: "A copartnership is a single property for two or more people, and that property may be the same, debt, benefit, or right" and in the definition of a Mofaveda copartnership, he said: Partnership is a contract copartnership in which two people enter into a contract in which they share whatever they get, whether it is the profit of business or the benefit of farming or acquisition or inheritance or bequest and other other things, and also any compensation or damage to each of them. May it come to both of them." The Shafi'i jurists have also given a definition similar to the Imam's definition of this contract, but the definitions of other schools of thought are different. The difference in the definition of the jurists of the Islamic quintette schools of the

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participation in Mofaveda has caused a misunderstanding from the point of view of different schools regarding this contract.

The Hanafi jurists consider three types of companies under the name of Mofaveda: 1- Mofaveda in property: it is when two people share property, Debt, and the right of possession equally with each other, and each of them shares in the profits and losses resulting from the business of the other partner. 2- Mofaveda in actions: It is when two or more people agree to do something together and do it and share in the profit and loss resulting from it. 3- Mofaveda in credit: It is when two people who are competent in guaranty become partners so that the price of the goods they buy is under the supervision of both of them and they both share in the profits and losses, and it is said that the Hanafi jurists should state these three. They accept the type of Mofaveda copartnership. Maliki jurists introduce the Mofaveda copartnership as the partnership of two people in a capital, on the condition that they do any business and gain profit with that capital, and they consider the partners to share in the profits of the copartnership with their capital and give it to them. According to the jurists of this school, the partners share in the money they get through inheritance, gift, etc. Rather, this property belongs to them. The Hanbali jurists also consider the Mofaveda copartnership to be of two types: 1- Participation in rare incomes such as inheritance and mining, etc, which they consider invalid. 2- Participation in all types of Anan, credits and Abdan companies, who consider this copartnership to be correct.

The arguments that have been argued for the invalidity of Mofaveda copartnership are mostly presented by Imamiyyah, Shafi'i and Hanbali jurists, and the supervisor of Mofaveda copartnership is the definition given by Imamiyyah and Shafi'i jurists of this participation. These jurists have insisted on several reasons to prove their claim 1. Gharar: Imamiyyah, Shafi'i and Hanbali jurists have argued that this copartnership is Gharari in order to prove the invalidity of the Mofaveda copartnership, in the sense that the Imamiyyah and Shafi'i have mentioned for it. According to the definition given by the Imamiyyah and Shafi'i jurists of the Mofaveda copartnership, it is obvious that this copartnership is a luxury because it is not known how much money and profit each of the partners will earn, and it is also not known how much compensation will be given to the partner. It will be directed at him. 2. Consensus: Some jurists of the Imamiyyah have cited the consensus of the Imamiyyah to invalidate Mofaveda copartnership. 3. Some of the Imamiyyah, Shafi'i and Hanbali jurists have argued that there is no reason for the validity of the Mofaveda copartnership in order to prove the invalidity of the Mofaveda copartnership. has caused it, and also the generalities that consider the cause of the damage as the guarantor of its payment, have declared the Mofaveda copartnership invalid; Because it is a contract contrary to the requirements

of the aforementioned generalities. Each of these arguments is answered in the text of the article.

The results that can be obtained from the whole of this article are: 1. The jurists of quintette schools, except for Imamiyyah and Shafiyyah, differ on the definition of Mofaveda copartnership. Mofaveda copartnership with the definition given by Imamiyyah and Shafi'i jurists of Mofaveda copartnership is not accepted by any of the Khamsa schools and all of them believe that it is invalid; Imam Khomeini also believes that this contract is invalid.

2. In some cases, the authenticity of this copartnership has been attributed to Malik, Ahmad Hanbal and Abu Hanifah. With the investigation that was done, it was observed that the Mofaveda copartnership that Malik believes to be true has no resemblance to the Mofaveda copartnership that Imami and Shafi'i jurists believe to be invalid. The Hanbali jurists also consider the Mofaveda copartnership to be correct, which is different from what the Imamiyyah and Shafi'i jurists have defined about this copartnership. The jurists of this schools also consider the participation on the wive Imamiyyah and Shafiyya to be invalid.

3. The Hanafi jurists, like the jurists of other schools of thought, do not consider the Mofaveda of the Imamiyyah and Shafiyya to be correct, and what they consider to be correct Mofaveda is something other than what the Imamiyyah and Shafiyyah jurists believe to be invalid. As a result, negotiating with the definition given by Imamiyyah and Shafiyyah, according to other jurists of the quintette schools, is also invalid.

4. In Iran's civil law, although there is no article that explicitly defines the contract of the Mofaveda copartnership, but the jurists, like the Imamiyyah jurists, do not consider the Mofaveda copartnership to be correct.

Keywords: contractual partnership, equal co-partnership, jurisprudence of religions, equal partnership in service, Imam Khomeini's opinions.

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