



# Legal Jurisprudential Study on Christian, Jewish and Zoroastrian Superintendence on Muslims Endowments

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(Received: 2021-08-26 ; Revised: 2022-06-28; Accepted: 2022-07-05)

## Abstract

In the Islamic jurisprudence, being a Muslim is a condition in such cases as executorship and testimony. The question arising is that whether or not a Christian, a Jew or a Zoroastrian can be the superintendent of the endowments if the beneficiaries are Muslims. Through a descriptive-analytic method, this study first brings up the pieces of evidence for the impermissibility of Christian, Jewish or Zoroastrian superintendence and then proves the possibility of non-Muslim superintendence on Muslims' endowments in some cases by means of juridical evidence. Indeed, designating a non-Muslim as a superintendent on Muslim endowments cannot be absolutely rejected. This is because the issue has different forms and each form has its own rules depending on the superintendent's scope of authority, the type of endowment, the endower being a Muslim or a non-Muslim, and the existence of any superintendent already appointed by the endower.

**Keywords:** Superintendent, Supervisor, Non-Muslim, Endowment.

## 1. Introduction

Religion and law have provided codes to preserve endowments and to help endowers achieve their goal of appointing superintendents. According to the Islamic jurisprudence, if an endower sets a certain condition for superintendence, the superintendent must have that condition. However, if there is no condition specified by the endower, jurists place some conditions on the superintendent regarding, for example, his or her wisdom, maturity, justice and competence. Some of these conditions are generally agreed on while some others are controversial. The question is whether or not the ruler, the endower or the beneficiary can appoint a non-Muslim to manage the endowments. In other words, «Is being a Muslim a condition for the superintendence of endowments?»

In this study, the term 'non-Muslim' only refers to a Christian, a Jew or a Zoroastrian who follows a scripture and is regarded by Islam and social laws if he or she observes the laws. In order to prove the possibility of non-Muslim superintendence, first of all, the arguments for the avoidance of the case are reviewed. Then, a body of evidence and reasons is brought up in favor of the issue.

## 2. Lexical and expressional meanings of endowment

Endowment (*waqf*) is a noun which means standing still, confinement, and prohibition

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(Ṭorayhī, 1983, vol. 5: 130-199; Ibn Manzur, 1994, vol. 9: 361-362). The derivatives of the word are also commonly used. For example, endowed, as a past participle, refers to the property given away. According to Shia and Sunni sources of jurisprudence, an endowed item is the one which is kept but its interests or profits are released. That is, the original property is not transferable except in some cases, but its interests are consumed in gratis ways that the endower has determined (Najafī, 1984, vol. 28: 3; Zuhayli, 1985, vol. 8: 153; Sherbiniy, 2009: 376). This definition is derived from the Prophet's (peace be upon him) statement «Keep the original property and release its interests (for the sake of Allah)» (Nūrī Ṭabrisī, 1988, vol. 2: 511). In general, the property endowed is called endowment.

### 3. Superintendent and supervisor in semantics

The word superintendent (*Mutivalli*) is a subjective noun that refers to a practitioner, a complier or an assistant (Ibn Manzur, 1994, vol. 15: 414-415). The word supervisor (*Nazir*) is a subjective noun which means monitor (Zabīdī, 2011, vol. 7: 537), but, as an expression in jurisprudence and in discussions of endowment, it is sometimes used to mean superintendent. Most scholars in the past used the word supervisor rather than superintendent, but recent ones have preferred the word superintendent (Allameh Hilli, 1993, vol. 6: 323). Among the preceding scholars, Sheikh Mufīd (1993, 825) and Ibn Idris (1991, vol. 3: 156) used superintendent, while, among the recent ones, Sahib *Jawahir* has used supervisor. (1984, vol. 28: 22)

Therefore, from the viewpoint of so many jurists, supervisor is synonymous with superintendent. The supervisor or superintendent of an endowed entity is someone that is responsible for that entity and in charge of its affairs. The civil law also defines superintendent in the same way; from the viewpoint of the Department of Endowments, superintendent is someone appointed to run the affairs of an endowment on the basis of a corresponding constitution or the provisions of a recognition center or a court.

Some scholars, however, such as Sahib Urwah, have made a distinction between supervisor and superintendent. As he puts it, «An endower can place a supervisor on the superintendent. If the supervision is practiced only to monitor the superintendent's acts and possessions, the endower's permission is not a condition but merely informing him is necessary. However, if the endower bases the supervision on his opinion and approval, the supervisor has to act according to the endower's approval and permission. In the case of any doubt in this regard, both the information and the approval of the endower are necessary» (Yazdī, 1997, vol. 2: 231). This decree has also been stated by Imam Khomeini in *Tahrir al-Wasilah* (1997, vol. 2: 74). Moreover, the civil law, article 78, makes such a distinction between superintendent and supervisor.

According to the civil law, a supervisor is a person assigned to inspect and supervise a superintendent's performance, but he is not directly involved in the management of endowments (Katouzian, 1990, vol. 3: 241). As Article 78 of the Iranian Civil Codes postulates, «An endower can place a supervisor on a superintendent so that whatever the superintendent does will be known to and approved by the supervisor».

### 4. Superintendence typology

According to the accreditation involved, superintendence is of two types including self-accredited and other-accredited.

#### 4.1. *Self-accredited superintendence*

An endowment may have a superintendent or not. If it does, the superintendent may himself be the endower or is appointed by him, or he is a ruler.

Shahid Sani believes that the right of supervision originally belongs to the endower because the endowment originally belongs to him. Whoever acts on the behalf of the endower and manages the endowed property in the determined way has the authority (Shahīd Thānī, 1993, vol. 5: 324). The endower can also reserve the right of superintendence for himself forever, but he can appoint a superintendent whenever necessary; for example, when the first superintendent died or his competence is declined (Yazdī, 1997, vol. 2: 227; Imam Khomeini, 1997, vol. 2: 73). As one of the Imams said, «endowments are based on the thing that the owner has determined» (Hurr Amili, 1989, vol. 19: 175). So, it is permissible and lawful for an endower to sign a contract and take the charge of supervision himself (Muhafiq Karaki, 1989, vol. 9: 34; Bahrani, 1985, vol. 22: 182). It is further quoted from the Imam that «believers must be committed to the conditions they set». (Hurr Amili, 1989, vol. 21: 276)

As mentioned before, a superintendent can be a non-endower. In such cases, the endower has to appoint someone for the job, whether among the beneficiaries or not. The appointed superintendent can also be granted full authority as to, for example, pass the position to a third party. (Najafī, 1984, vol. 28: 21; Khoei, 1990, vol. 2: 238)

There is a disagreement among scholars when there is no superintendent appointed, that is, the endower has not determined any specific person. In such a case, there is one of the following decrees to practice:

- a) Superintendence belongs to the endower himself.
- b) Superintendence belongs to the beneficiary.
- c) Superintendence belongs to the ruler. (Yazdī, 1997, vol. 2: 227; Najafī, 1984, vol. 28: 25; Imam Khomeini, 1997, vol. 2: 75)
- d) If the endowment is special, superintendence is for the beneficiary, but, if the endowment is something common, it belongs to the ruler (Shahīd Thānī, 1993, vol. 3: 177).

In this regard, there exist details that are beyond the scope of this study. (For more information, refer to Khoei, 1990, vol. 2: 238)

The lack of unanimity in this case stems from the uncertainty whether the original endowed property remains in the endower's possession or is transferred to a beneficiary or to God. With the division of endowments into general and specific, it is maintained that specific endowment is transferred to the beneficiary, while general endowment is made for God. Based on the stated principle of the property survival in the endower's possession, the superintendent is considered as the owner. However, based on the principle of special property transfer, the beneficiary takes the absolute possession. In the case of transfer to God, He will be the owner (Yazdī, 1997, vol. 2: 227).

Sunnites have disagreement on this matter. Hanafis maintain that, in such a case, the endower is the superintendent of the endowed property (Sherbinīy 2009, vol. 2: 393). Malikis and Hanbalis, on the other hand, believe that superintendence belongs to the beneficiaries if they are limited; otherwise, it belongs to the ruler (Muqniyah, 2001, vol. 2: 608). Finally, Shafi'is has three opinions including: a) superintendence belongs to the endower, b) it is for the beneficiary, and c) it is for the ruler. (Zuhayliy, 1985, vol. 8: 231)

#### 4.2. *Other-accredited superintendence*

The one who postulates superintendence is either a law-maker or an owner. If he is the former, the superintendence is original and canonical, and, if he is the latter, it is charged and proprietary.

Canonical superintendence is the right of general monitoring granted to clerical rulers in the absence by Imams. Where a ruler is responsible for superintendence, he can manage the affairs himself or appoint someone else as his lawyer or superintendent. He can also remove a lawyer, but he is not allowed to remove a superintendent that has the required competence. (Yazdī, 1997, vol. 2: 229)

Proprietary superintendence is conducted on the behalf of the owner or someone that the owner has empowered or appointed as a clerical ruler. This type of superintendence entails the following cases:

- a) **Private endowments:** Most cases of proprietary superintendence regard this type of endowments. The endower or someone under his order gives the right of superintendence to one person or more.
- b) **Public endowments:** In this case, the clerical ruler appoints a superintendent on behalf of himself.
- c) **Public endowments:** A certain person is appointed by the owner.

## 5. Superintendent's duties and authorities

If the endower does not specify any duty for the superintendent, there are certain conventional duties to fulfill. First of all, the superintendent is responsible for protecting the endowment as well as modifying it if necessary. Secondly, he has to collect the endowment revenues and spend them based on endower's opinion. These tasks are supposed to be done with precaution and prudence, and no one, even the beneficiary, is allowed to interfere with it. This is the opinion of most jurisprudents including Imam Khomeini. (1997, vol. 3: 149)

However, if the endower has already determined specific duties for the superintendent, he has to fulfill them with discretion. The endower may specify the superintendent's duties as follows:

- a) Exertion of his authority on all the affairs so that the beneficiary would have no right except receiving his share from the revenue.
- b) Increase or decrease of the beneficiary's share.
- c) Inclusion and exclusion of whomever he wants in and from the endowment affairs.
- d) Supervision of the affairs related to the endowed property, despite its being at the beneficiary's disposal.
- e) Supervision of the endowed property as previously done by the supervisor.
- f) Responsiveness and accountability in case the beneficiary refers to him.
- g) Settlement of conflicts among the beneficiaries.

The endower may set limitations to the superintendent's authority or appoint another person for some affairs. In such cases, the endower's opinions or decisions should be put to practice. (Kashif Al-Ghita, 2002, vol. 4: 246-247)

Articles 9 and 10 of Endowment Executive Procedure have specified the duties of superintendents.

## 6. Qualifications of an endowment superintendent

A superintendent is either an endower or an individual appointed by the endower or a clerical ruler. Whatever conditions a clerical ruler is required of should also exist in a superintendent, such as maturity, wisdom, will, justice, discretion and Islam. There is no room for dispute in this regard.

If a superintendent is an endower, jurisprudents have spoken only about justice as a condition; there is no decree on other conditions. Some scholars like Sahib *Jawahir* (Najafī,

1984, vol. 28: 21), Shahīd Thānī (1993, vol. 5: 325), Sahib *Urwah* (Yazdī, 1997, vol. 2: 229) and Imam Khomeini (1997, vol. 2: 73) have referred to justice as a non-essential condition. These scholars have remained quiet on being a Muslim as a condition for the superintendence of endowments.

If a superintendent is appointed by an endower and the endower has set specific conditions for him, the superintendent has to possess those conditions. This is based on the principle of “an endowment is to be managed in the way the owner has determined”. However, if the owner has not mentioned any specific condition, the conditions required of the superintendent are divided into two categories as follows:

1. Conventional conditions including maturity, wisdom and free will. So many scholars have not referred to these conditions, but it does not mean they are of no validity; task assignments generally call for these basic conditions, and whoever undertakes an assigned task (*mukallaf*) is expected to have them.
2. Controversial conditions including justice, trustiness, competence and Islam. These conditions are elaborated on in the following:

**a) Justice:** Sahib *Hada'iq* (Bahrani, 1985, vol. 22: 184) claims there is no dispute on the necessity of justice in an appointed superintendent, but, in fact, there is a lot of disagreement regarding this issue. As Mohaqqiq Sabziwari (2003: 141) has said, “The necessity of justice is a fact well-known to jurists”. Some others, like Sahib *Jawahir* (Najafī, 1984, vol. 28: 21), do not consider justice as a condition required of a superintendent. Still some others, such as Yazdī (1997, vol. 2: 229) and Imam Khomeini (1997, vol. 2: 73), have strongly rejected the validity of justice in this regard.

Shafī'is, Hanafis and Malikis consider justice as a condition in superintendence (Husaini al-Hishi 1994, vol. 1: 197; Zuhayliy 1985, vol. 8: 232), but Hanbali scholars only regard maturity, wisdom and trustiness as the necessary conditions. (Sherbiniy 2009, vol. 2: 393)

**b) Trustiness:** Yazdī (1997, vol. 2: 230) believes that an endower is not allowed to appoint a treacherous man as a superintendent.

**c) Competence:** Some scholars such as Imam Khomeini (1997, vol. 2: 73) consider competence, some others like Shahīd Thānī (1993, vol. 5: 325) view familiarity with management and some others such as Kashif al-Ghita (2002, vol. 4: 246) regard the ability to recognize advantages and disadvantages as necessary conditions

**d) Islam:** Until recently, no Shia jurist mentioned Islam as a condition for supervision or superintendence, but a few contemporaries such as Sayyid Muhammed Sadiq Sadr, *Maqalih AL-Waqf in Islam*, Ayatollah Khamenei es-tef-tâ' number 2018 have made references to it. Most Sunnites consider ‘being a Muslim’ as a condition. As they maintain, if the beneficiary is a Muslim or the endowed item is of public benefits, like a mosque or a clerical school, the superintendent must be a Muslim; however, if the beneficiary is a pagan, a pagan superintendent can do the job. (Kubaisī, 1997, vol. 2: 109). In contrast to other Muslim scholars, Hanafī jurists do not view Islam as a superintendence condition. They actually believe a pagan can be in charge in any case. In their opinion, a superintendent undertakes the protection of the property and the delivery of its revenue to the beneficiary. To meet these objectives, the superintendent should merely be trustworthy.

## 7. Reasons for Islam as a condition in superintendence

The impossibility of non-Muslim superintendence in the case that the beneficiary is a Muslim is argued as follows:

a) According to a narrative, Imam Ali willed superintendence on his endowed property and introduced Islam as a condition for this position. A part of the narrative reads, «If anything

happens to Hasan and Hussain, the last relative of these two has to search among Ali's descendants. If someone competent, Muslim and trustworthy is found, assign the work to him». (Kulayni, 1987, vol. 5: 50)

According to this narrative, Islam, trustiness and competence are considered as superintendence conditions.

b) Endowment is a ritual act and needs intention of proximity to God. Appointing a non-Muslim as a superintendent is in contrast with that intention. Indeed, rituals do not go together with paganism.

c) Endowment is a kind of guardianship, and guardianship on a Muslim is not possible except through a Muslim (Sayyid Muhammad Sadiq Sadr, rasekhooon website, Maqalih Al-Waqf in Islam). This is especially the case if the beneficiary is a child or an insane person. Regarding the dominance of non-Muslims over Muslims, Hurr Amili (1989, vol. 26: 14) refers to the quotation «Islam is great and nothing is superior to it». This issue is also stated in the Qur'ān, «Believers must not select pagans as friends or guardians. If someone does so, he has no relationship with God» (Qur'ān 3:28). This Quranic verse prohibits believers from asking non-Muslims for help (Tabari, 1943, vol. 3: 152). Therefore, superintendence of pagans on Muslims, which is a kind of request for help, is impermissible.

d) Every form of non-Muslim dominance over Muslims is prohibited by God. As the Qur'ān states, «God rules out the dominance of pagans on believers» (Qur'ān 4:141). Non-Muslim superintendence on a Muslim's property is a kind of non-Muslim dominance on Muslims, which is impermissible based on the Quranic verse.

e) According to the holy Qur'ān, «incline not to those who do wrong, or the fire will seize you; and ye have no protector other than Allah, nor shall ye be helped» (Qur'ān 11:113)”. In this verse, the phrase “who do wrong” means pagans. The verse discourages any inclination to them or giving them consent (Tabari 1943, vol. 12: 75). The superintendence of a non-Muslim involves showing tendency toward him because he has to manage the affairs of Muslims sometimes in close contact with them. Therefore, considering a non-Muslim as a superintendent is absolutely impermissible.

f) Non-Muslims are not trusty, and trustiness is important in superintendence. Therefore, it is impermissible to consider non-Muslim superintendence on Muslims.

g) Justice is a condition for superintendence, but it is not achieved by non-Muslims. This is because there is no injustice worse than paganism.

## 8. Investigating the reasons

Of the seven reasons mentioned above, the first one is not suggestive of the point. It is firstly because satisfaction with the superintendent's Islam, as mentioned in the narrative, appears to be instrumental (tariqhi) and just refers to the appearance of the matter. In this case, indeed, Islam serves as a means of gaining satisfaction (with the superintendent's act) by the endower or an executor; this is different from the real belief in Islam. Secondly, selecting a Muslim superintendent is an option that the endower or his executor has. Therefore, he is allowed to select a non-Muslim.

Regarding the second reason, an intention of proximity to God cannot be accepted in endowment; many Shia jurisprudents (Shahīd Awwal, 1997, vol. 2: 264; Khoei, 1990, vol. 2: 233) as well as Sunnite ones, like Malikis and Shafi'is (Muqniyyah, 2000: 71) do not consider the intention of proximity as a condition in superintendence. It is mainly because endowment is a conventional act; there is usually no intention of proximity involved in convention, especially in endowment for children. However, if an endower has the intention of proximity to God, he will be rewarded. Of course, this intention of proximity, which might be deemed

necessary in endowment, is different from that in ritual acts of worship. Such acts performed with the intention of proximity are not accepted by God unless the worshipper has a true faith. At least, the absence of faith makes the act ineffective. This conditionality is out of question when discussing endowment maybe because jurists think that endowment even made by a pagan is beneficial. Moreover, if intention of proximity to God is needed in endowment, like in acts of worship) the endower is obliged to make the intention when signing the endowment contract, which has nothing to do with the recruitment of a non-Muslim superintendent. Finally, the superintendent sometimes has to make an intention of proximity, as in paying the charitable share of the revenue. In this case, he can employ a Muslim lawyer, which is permissible in the religion.

The third reason is not defensible enough because non-Muslim superintendence does not necessarily lead to supremacy or domination over Muslims. Investigation of different cases of superintendence has shown that, in most of cases, especially in financial affairs, the endower does not seek dominance for the superintendent; rather, superintendence is merely a type of lawyer or manager recruitment. Therefore, taking non-Muslim lawyers or superintendents is permissible for Muslims.

Regarding the fourth reason, firstly, it is to be noted that the mentioned verse should be understood on the basis of its preceding verse, which refers to Hereafter (Mūsawī Bujnūdī, 1999, vol. 1: 158). Secondly, according to what is quoted from Sadūq (1999, vol. 2: 2014) the word «sabil» means proof (*Hujjat*). That is to say, non-Muslim will have no reason against believers on the Resurrection. Third, non-Muslim superintendence is to be avoided only when a non-Muslim hires a Muslim for a task, but this idea is challenged by some scholars such as Rouhānī (1992, vol. 20: 406). They argue that it is a false analogy to compare the superintendence of public affairs with the superintendence of personal affairs that merely involves trust and hiring.

With respect to the fifth reason, first of all, inclination to non-Muslims is not prohibited because the mentioned verse is about inclination to those who oppress others not those who oppress themselves; non-Muslims are believed to oppress themselves. Secondly, if the verse includes non-Muslims, it has to do with trust and inclination in matters of religion and spirituality (Mūsawī Sabziwārī, 1993, vol. 22: 209-210) not the worldly affairs. Third, even if inclination is involved in the superintendence of endowments, it has nothing to do with religious rituals; most jurists believe that endowment is a financial interaction not a ritual.

The sixth reason postulates that non-Muslim superintendence should be rejected because non-Muslims are not trustworthy. This implies that being a Muslim is not a real condition but is merely a sign of trustfulness. So, that is enough for a non-Muslim superintendent to be trusty. Secondly, it is not acceptable to say that non-Muslims cannot be trusted. As Sahib *Jawahir* (Najafī, 1984, vol. 28: 404) has said, «We sometimes rely on fair non-Muslim, even more than on fair Muslims especially Sunnites» p. 404. So, if, as Islam confirms, reliance is based on trustiness as a condition, non-Muslim superintendence cannot be absolutely rejected.

Finally, with regard to the seventh reason, jurists have no agreement on the injustice of non-Muslims. As Shahid Sani in *Masalik Al-Afham* (1993, vol. 14: 160) maintains, it is possible for non-Muslims to be just and fair. Secondly, supposing that justice does not come true in non-Muslims, it is not a conventional condition in superintendence; many scholars such as Najafī (1984, vol. 28: 21) and Yazdī (1997, vol. 2: 230) have not considered it as a condition. Thirdly, supposing that justice with its conventional meaning is a condition and such justice does not exist in non-Muslims, it cannot be a real condition in superintendence until the act proves to be honestly done. Setting justice as a condition is merely a way to make sure that the superintendent is honest and does his job based on the endower's opinion. So, being a non-Muslim is no disadvantage for a superintendent as long as he is trustworthy.

## **9. Evidence for the permissibility of non-Muslim superintendence on Muslim endowments based on the rule of private possession**

The rule of private possession regards everyone's right of possessing his or her property and using it in whatever desired way, except for cases in which he or she is evicted from the possession; for example, due to unreasonable wasting of the property. This rule is derived from a well-known remark of the prophet that «People are in control of their own property». (Ibn Abi Jomhour, 1983, vol. 1: 222)

Based on this rule, an endower can control over his property and appoint whoever he likes as a superintendent, even a pagan.

To verify the validity of this rule, it is, first of all, to be noted that most jurists believe that, by endowing, the endower loses the ownership of the property and, thus, he or she cannot make decisions about it unless through a proviso which has to be respected by a contract. The prophet's quotation does not hold true of the endowed property. Secondly, the coverage of this rule is disputable. It is argued that the rule is so general and devoid of certain details, especially the conditions of endowment by the owner. The rule, indeed, simply allows people to possess their property on the basis of the enacted regulations. In dubious cases, however, this rule should not be put to practice; it is valid only when the confines of the postulated regulations or conditions. In this regard, any vicious cycle should be avoided in the interpretation of the rule. The interpretation is one-way; the implementation of the rule is based on the existence of conditions, not vice versa.

## **10. The rule «endowments are made and managed as the owners decide»**

This rule has been quoted from Imam Hassan Askari. As Mohammad Ibn Yahya narrates, some people wrote a letter to Imam Hassan Askari and asked him about how to run endowed objects. Imam replied that endowments are managed based on what the owner decides, if God wills. (Kulayni, 1987, vol. 7: 37)

Mūsawī Bujnūrdī (1999, vol. 4: 230) says, «this quotation seems to belong to a specific school of thought, but, because Tusi, Kulayni and Saduq as three great scholars have reported it and its document is correct, most jurists act upon it as a decree which is sure to have been issued from an imam». Allameh Majlisi (1983, vol. 23: 63) considered this quotation valid too. Accordingly, in a case of endowment, the endower's decisions and preferences as well as the conditions set by him should be respected with regard to the circumstances and the types of the possessions. In this regard, the endower can determine even a non-Muslim as a superintendent, which generally implies that the employment of non-Muslims for personal errands is correct and plausible.

One may argue that, firstly, because endowment is a religious issue, the permissibility of each of its aspects depends on the corresponding religious coordinates and conditions; the rule above has been mentioned explicitly in general while its religious aspects are implicit and taken for granted. If there is a doubt about the characteristics of an act of endowing, one cannot adhere to the quotation because its generality does not create certainty. Secondly, this quotation assumes that the endower performs within the framework of religious conventions, while it does not mean to recount the details or fundamentals of those conventions.

The counter-argument is that one may doubt whether or not a certain condition is mentioned in the endowment contract. In other words, the very correctness of the contract may be put to question. However, if the contract is concluded with all the religious requisites fulfilled, it is valid, the endower's right to appoint an individual as a superintendent should be respected, and the superintendence should be conducted based upon the endower's rule.



## 11. Plausibility of endowment to non-Muslims as a proof for their superintendence liability

Most of Shia and Sunnite jurists believe that there is no prohibition for a Muslim to endow a pagan with something (Sherbiniy, 2009, vol. 2: 379; Ibn ‘Ābidīn, 1992, vol. 3: 295; kalbi, n.d., vol. 5: 56). Even Muhaqqiq Hillī (1988, vol. 2: 216) has considered it plausible. As for the Qur’ān, the book states «Allāh does not forbid you from those who do not fight you because of religion and do not expel you from your homes from being righteous toward them and acting justly toward them. Indeed, Allāh loves those who act justly» (Qur’ān 60:8). This proves that a pagan’s superintendence on a Muslim’s endowment is permissible and he can manage it as he likes. In short, endowment is a central but superintendence is marginal. As the former is not discouraged by jurists, the latter is permissible.

This deduction may be a false one, but endowment on pagans does not entail their dominance over Muslims, Muslims’ inclination to them, or other scruples. The only problem is that endowment on pagans may contribute to their paganism, which has been ruled out by many scholars. According to them, endowing pagans is not only a sin but also a charitable and humanitarian act. The only prohibition is dedication to their synagogues and temples Sahib *Rīyād*, (Tabātabāyī, 1984, vol. 10: 134). On the hand, the superintendence of pagans may involve the inclination of Muslims to them, pagans’ guardianship of Muslim and their dominance over Muslims, which are all prohibited.

To defy the argument above, it is to be mentioned again that superintendence by pagans is not always followed by inclination to them or their dominance. Briefly speaking, superintendence or any other relationship such as administration and advocacy is allowed if not beset with religion-set drawbacks.

## 12. Conclusion

Appointment of non-Muslims as the superintendents of Muslims’ endowments is not absolutely rejected. If the superintendent is appointed by the endower and his authority is limited to income management and supervision of matters related to endowed property, the case is correct and permissible. Granting comprehensive authority to a non-Muslim (e.g. Jewish, Christian or Zoroastrian) would involve his or her guardianship or dominance over Muslims, which is not allowed by jurists. As for a task of superintendence put in the charge of a Muslim, the case is correct and acceptable as long as he or she is liable for the job, whether the endower is a pagan or a Muslim and the endowment is public or private. Once a non-Muslim becomes a superintendent, he or she is assumed to have the general conditions needed for the job, such as honesty. The superintendence in this case is merely a kind of advocacy or mediation. Since non-Muslim advocacy is religiously permitted, non-Muslim superintendence is permitted too. This permissibility persists as long as the superintendent sticks to the endower’s terms and conditions. It derives from the religious rule that «an endowment should be managed based on what the owner has determined».

Considering non-Muslims, however, for the superintendence of places such as mosques and shrines is strongly disputable because the job has closely to do with religious items and issues. It is also impermissible if the granted authority is great enough to make them dominant over Muslims (for example, when a non-Muslim plays the role of a guardian by undertaking the affairs of minors or insane individuals along with the full control of their property). In such cases, if a Muslim is not found for the job, selecting a non-Muslim is plausible on the basis of the expression «necessity has no rules».

At times, a Muslim endower has not appointed a superintendent and a qualified Muslim superintendent exists. If so, the beneficiary himself or the ruler is not permitted to select a non-

Muslim superintendent, whether in public or private endowment; when signing a contract, the endower has to presume Islam as a condition for superintendence. In this regard, the supreme leader of Iran was asked the question «Is it permissible for the Muslim users of an endowment to officially introduce a non-Muslim as a superintendent?» He responded, «It is not permissible for non-Muslims to superintend the endowed property of Muslims». (code 2018)

As another possible case, if the endower confirms that the superintendent can be a pagan, it is permissible to select a non-Muslim for affairs merely related to advocacy. However, the superintendence of non-Muslims on certain Muslim public affairs, such as mosques and shrines, is not allowed because it is tantamount to a kind of dominance over Muslims. In religions other than Islam, endowers have to select superintendents of the same religion even if it is not conditioned, whether in public or private endowment. For example, all Zoroastrian endowment-letters maintain that the superintendent will be evicted if he converts from Zoroastrianism. This right of eviction has even been recognized by the Office of the Supreme Leader in code 556912. According to article 80 of the Civil Code, not only Muslims but also Zoroastrians, Christians and Jews can appoint superintendents of their own religions.

As far as supervision, rather than superintendence, of endowments is concerned, being a Muslim is not necessarily a condition. This is because supervision is merely a matter of information transfer and is, thus, valid only if the supervisor is credible. The supervision of Muslim affairs is conditional, of course, in that it should not involve any dominance over Muslims.

Apart from certain prohibitions imposed upon the superintendence of non-Muslims, there are some arguments in favor of it. First of all, a non-Muslim endower may put himself in charge of superintending his own endowment. This right is recognized in absolute terms by jurists; they make no distinction between pagans and Muslims in this regard. Secondly, Being a Muslim might be set as a condition either in ritual affairs or in social affairs. The former is dealt with as prescribed by the religion, but the latter can be conducted as reasonable. Since endowment is a social matter, recruitment of Muslim superintendents is not imperative.

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