Apportionment in Iranian Law and Islamic Fiqh

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Abstract

In societies, generally people own possession which they don’t allow others to manipulate these properties by using ownership right, but they are not always the only owners of the properties, and their ownership isn’t supposed and in some cases this ownership is in the proportion and partnership condition. In proportion, the partners are not allowed to manipulate the property without other partners’ permission, because every partner has the same portion and right as others partners. Any manipulating, without other partners’ permission is against to other partners’ right and it is illegal. In this article, we have tried to have better understanding about proportion which is about apportion and sharing which aren’t identified and explained in law and scattered cases – mentioned in law – are about rules and regulation and they need to be redefined and more accuracy.

Keywords: Islamic Fiqh, Apportionment, law.
INTRODUCTION

Human relationship has different aspects and partnership is one them which is used in properties among partners. The cause of this ownership might be compulsory or optional, that sharing is required. The concepts of apportion in religion books, partnership, agreement and law have been discussed and the rules, conditions and abstracts have been mentioned by them. Layers and judges have been working about this topic too, and they have discussed these rules in civil law. Also the concepts of proportion have analyzed and discussed by lawyers. In this article the nature of apportion has been explained, because the concept of this subject has several different definitions which are expressed by religion scholars. After that the different kinds of apportions have been discussed and different cases about sharing are brought. Due to the similarity between the concepts of apportion and split partition and their separation in law, this difference has been well explained, and they are explained in 3 sectors by religious books and law.

PART ONE

The definition proportion:

Proportion means to divide, to share something or the benefit of something among partners. In religious concepts – Islamic law – it means to divide among and separate a property between partners. It means to separate and identify the condominium property of each side, including the tangible and intangible property, by admeasure separation of some partners to consent partners or according to the court decision.

DIVIDING ELEMENTS AND ITS DIFFRENCE WITH SEPARATION:

According to the lawyers’ definition about the proportion, it is made of 5 elements: 1- property (real property, debt, profit and profit rights ) 2- Proportion mode 3- having at least 2- partners 3-removal of proportion mode 5- recognizing and identifying rights of each partner in the mentioned property.

Proportion mode is a property of possession and without the a proper understanding of it the separation is not completed and it is impossible and negative to nullifying the subject. So this element is an inseparable element of apportion. According to the second element, if a property have been shared between to partners, this condition – agreement – is sustainable till something revoke this partnership. And this possession is shared between the partners by all means. About the third element we must consider the minimum numbers of partners, not the maximum numbers and in this case there should be at least 2 partners. About the fourth case we can say
that the partnership is revoked by the court decision or by consent partners. The last case depend on the fourth case, and the property is a condominium property or a supposed property.

**PROPORTIONS:**

The proportion weather done by court, duress or consent partners, it needs some requirements that must be considered:

1. split partition
2. split adjusted
3. divided in to rejection
4. divide the price and by selling the property. This order shows that the conducting of each case depends on the previous case and it cant be used until the previous one achieved.

SPLIT PARTITION: The Arabic word for this is AFZAR, which means to divide or separate, but it has general and comprehensive definitions: admeasure, to divide a property between 2 partners equally, weather by court sentence or consent partners. In this case there is no definition about admeasure in law and the judges distribute it according to the number of partners. For example if the partners of 1000 kilos of rice are 2 partners, each partner owns 50 percent, but if the numbers of partners are more than 2, this portion is reduced, depending on the partners.

**THE PROPERTIES OF SPLIT PARTITION AND ITS DEFRENCES WITH SEPARATION**

Beside the benefits of proportion, its definition and recognizing the elements of divisions in the reference division (in general concept) are important. For example if a condominium property – intangible –that is not under the charter of split law for selling the condominium property which was declared in 1357, even if the registration had done, the separation would be done by court, and it isn’t included in the new law. Segregation is usually done for heirs, meanwhile in civil law this segregation is done for partners and it is similar to split partition. To have a clear definition of these words it’s better to understand the basic elements of them.

**The elements of segregation:**

Having intangible properties, lacking of proportion mode and lacking of condominium portion split despite if the proportion mode is existed.

The first element is clear enough and no definition is required, but the rest will be explained within an example. For example some has a lot – 2000 meter square – and he wants to divide this lot to smaller lots, so it is clear that in this case there are no proportion modes, but if this lot has more than 1 owner, they should split the lots in to smaller parts and they have the same portion in each lot and both of them are the owners of the lots. A term that is used beside the division is allotment, which is similar in meaning with division.
For split partition, these elements can be used:

The existence of tangible and intangible properties, the existence of proportion mode and dividing the possession between the partners based on their portions.

The first element is basically used for tangible and intangible properties, but right now split partition is just used for intangible properties, meanwhile division is used for both and in this aspect they are different. From the second element we can conclude 2 results: split partition can be conducted by court and by consent partners and it can be constituted right after declaration.

**SPLIT ADJUSTED**

This word means to divide something and partners fairly. There are different definitions for it provided by lawyers and religious scholars. This split is usually done when the possession are not harmonized equally. In these conditions, with accurate admeasures and partners admeasures, they division is done. For example there is lot which is located between a main road and another one is located on sidewalk, so this lot must evaluated clearly to have a fair division. Sometimes a property is not separable - for example a rug and a refrigerator - so, they must be evaluated split adjusted and estimate individually until it is compromised.

**DIVIDED INTO REJECTION**

This division has no title in civil law. It may be a kind of split adjusted. So this division is admeasure. This division is conducted when the other forms of division aren’t possible for dividing. In this case the partners have different prices for a shared possession. In these conditions the religious Scholars have different opinions, some are believed in alienation and exchange and they see no compulsory in it. But others thinks that compulsion is also can be used. From article 316, we can conclude that divided into rejection is compulsory and consent partners has no effects on it. In this condition the loss of the partners must be considered to avoid any loss for the partners. For example if the prices of 2 items are different – rug 1000000 and refrigerator 1500000 – the total price will be shared between the partners. So a partner who owns the refrigerator, must pay 250000 tumans to his partner.

**DIVIDING BY SELLING THE PROPERTIES**

If the mentioned ways of dividing weren’t possible, selling the property is chosen. By selling the property and then the price of property will be divided between the partners based on their portions. The aim of selling the property is that it can’t by divided directly. According to article 317, “ every property, including the tangible and intangible properties that can’t be shared between the partners, it might be sold and the price of the property will be divided”. In fact the base of indirect dividing is this article.
THE NATURE OF APARTION IN LAW

The sunnies religion scholars believe that dividing is a contract, because every partner can use his portion of the property according to his own admeasure. Some Shiaa religion scholars also believe that apportion can be exchanged, in the high court of the country this case is mentioned. Beside that some shiaa religion scholarship believe that division is an agreement and it can be exchanged, the permanent idea is, dividing is not a contract and the special rules of deals can’t be used for it. These religion scholars don’t believe that dividing is an agreement, because agreement for these people isn’t just the agreement of dividing but it must be done by general deal rules and refusing these rules is refusing the apportion. The importance of this idea is that if dividing is a part of agreement, all the rules – general and special rules – of deals can be implemented. Dividing is used to declare and identify the portion and rights of partners. The law point of this opinion is that, condominium property has declarative aspect.

APARTION IS THE DECLARATION OF RIGHTS

As we mentioned, dividing – also in most religion scholars’ opinion – basically is a fair separation among partners. The sentence means that condominium properties can be declared. It means that the portion of each partner can be declared right after the new dividing and they can be the owner of themselves portions. In contrast, some lawyers believe that apportion doesn’t need a declaration.

APPORTION IS AGREEMENT AND EXCHANGE

Opposite to shiaa scholars who believe that dividing is not an agreement and sell, lawyers believe that separating the rights between the partners is a kind of exchange. According to their views, the partners don’t just make a simple separation but they make a kind of transaction on the real profit or real condominium property, and some lawyers believe that it is an agreement between partners. According to this opinion, dividing is an agreement and by this thought that in religion books, dividing is not a part of any contract and the dividing is done by the consent partners, this agreement is not out of contract. This opinion in religion books is not new. For example Emam Sorkhi, a Hanafi scholar has mentioned this in his work and some shiaa scholars like AYATOLLA KHOEE has brought this subject in his works.

DIVIDING THE INTANGIBLE PROPERTIES

A company as shared center for partners will be stopped/closed someday and this relationship will be ended and every partner can have its own share of the company. Apportion is done by rules which are written for dividing. An intangible property may have shared between several partners. The dividing of property is similar to TARKEH, but for intangible properties, this division may do in the court or a register center.
APPORTION IN REGISTRATION OFFICE

The intangible property also can be divided by the registration office in special conditions. This justification is from the first sentence of the selling condominium article in 1357, which gives authority to the registration centers for these condominium properties which are registered in registration centers. If a court is not available in this area and the registering process has been done completely, the registration department can divide the property according to the law.

APPORTION IN THE COURT

If the intangible property doesn’t have the conditions of selling condominium properties, the court is the only place can divide this property. A court can divide the property by some considerations like owners’ opinion about the property and inquiry of this property from the registration office, and court can divide the property if the conditions for dividing are achieved.

DIVIDING THE TANGIBLE PROPERTIES

The only center for dividing the tangible properties is court and the local qualification for shared property and apportion mode is different. If the property is hereditary, the case must return to a local court where the late was living for the last time. (article 163 and 164)

But for apportion, according to the article 13 released 1359, the permit of requirement is from the local places where the contract is written. Other conditions for dividing can be used.

DIVIDING THE PROFITS

Profits whether real or independently can make apportion between the partners and this is not a new subject among the religion scholars, because they have written about the profits of intangible properties which is known as Mahayat.

The partners may request the portion of this profit from the court, so the apportioning can be done in the court and it isn’t just restricted to the intangible property and it can be done for other tangible properties but it is more common for intangible properties.

For example, if 2 partners have house with 2 floors and they don’t want to divide the property, so they can use the profit of each floor, here they have divided the profit. And if these partners want to divide the property, this portion is on the site. Profit apportion will be revoked by dividing the real property. In any condition an apportion which is done by court is valid until the it is revoked by new law or sentence.
DIVIDING THE DEBTS

The promise and the promiser are two other characters that they must stay commitment to their positions. There is a different between promise and promiser in the property, because the have negative and positive views. The first question is, can we divide the debts? Some scholars believe that dividing the debts before receiving it cant be divided, because it isn’t a part of the property, but others believe that it is possible to divide it because it is a part of property. In any conditions demanding the debts is lawful. Dividing the salary has the same concepts of the property dividing.

Dividing the rights, for example the rights of having something, the rights of Tahajor – an Arabic word for a property that doesn’t belong to any one and somebody wants to register it for himself – and the rights of selling properties like a store, have the same concepts of dividing. But here there is a question, if someone be owner of a Tahajor property and he dies before he could complete the registration, apportioning between his heirs is lawful and they can demand their portions and it must be mentioned that this is a Tahajor rights not a land and it can’t be divided.

CONCLUSION

The discussion about the rules of dividing which are brought in civil law, is the second subject in chapter 8. (articles 589 to 606) and the seventh chapter that is about apportion, contains the decisions and rules which are used for dividing. As we mentioned, there are different opinions for dividing and religion scholars have different views from lawyers. We can mention this briefly that apportion dividing is similar to agreement and duress dividing is out of law rules and the action of this dividing is simple process in court or other related departments. Dividing is possible for all properties and whenever a property couldn’t be divided other sub things instead of the property would be divided.
References


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