Pyramid Marketing Contracts from the Perspective of Iranian Law and Islamic Jurisprudence

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ABSTRACT

Background: It has been a decade that pyramid marketing has caused a lot of harm to Iranians. Pyramid companies try to justify their activities as legal legitimate activity. But it must be considered whether or not these activities are consistent with state law and jurisprudence and whether or not the conditions in these contracts are consistent with those of legal contracts. The current study is to study aforementioned contracts on the basis of jurisprudence and state law of Iran.

INTRODUCTION

Marketing is defined as a managerial-social procedure through which people and groups supply their needs by production and trade. In the past few years, through abusing the name of marketing some people have earned a lot of money. Pyramid marketing causes inevitable economic harms to the people and Iran is no exception. From the beginning of their activities (in the late 70s), pyramid companies have caused irreversible problems for the people so that the government and religious leaders have warned people so many times not to enter in such activities. Pyramid activities which happen through recruitment of people have always been rejected by the religious leaders and even sometimes they have named such activities as fraud and unlawful possession. But their interpretation of the prohibition of pyramid activities is more of a response to the questions which is general.

From a jurisprudence point of view pyramid contracts do not meet the perquisites of a healthy contract so in many countries including Iran these activities are forbidden.

The concept pyramid marketing and its components

There are numerous definitions for pyramid marketing and the followings are some of them:
- It is a method for selling goods in which people buy the franchise for a good from the producer and sell it to another person. And this process of selling goes on [1].
- Hierarchical trade of the good or dealership selling. [2]
- The art to stimulate people to buy something even if the product being sold is not of the buyer’s [3].
- Pyramid plans are unlawful plans in which a lot of people on the bottom of the pyramid pay money to the few people on the top of the pyramid and people pay this money with the hope of getting to top of the pyramid and earn money [4].

Form the definitions we can find the common components in pyramid marketing which include the fact that if a company pays one of the partners just because they are here then this activities are based on recruitment not on services and goods, this is pyramid marketing, pyramid marketing is not actually marketing but recruitment. John Taylor names some elements to recognize pyramid marketing including:

1- Lack of recruitment limits. In this kind of activities everybody who becomes a part of the pyramid can bring other people and the recruitment process goes on like this and there are no limits in this recruitment. But infinite recruitment leads to glut.

2- Buying imposition. Applicants must primarily buy their products to become a member. These companies have to cover up their illegal activities, and offer goods or services to sell, make any offer, to avoid suspicion. Generally the good sold to the member is not delivered to them and it is kept as their capital in the company.

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3- Their success in the hands of recruitment. Every member can benefit only if they can find other members and the new members have to find more and more members to higher their interest rate. As the number of the members grow more the chance of getting to the top of the pyramid grows more.

4- More benefit to the people on the top. At last recruitment leads to the payment of large amounts to the people who are at the top of the pyramid which is not consistent with their level of activity. In fact, recruitment leads to permanent payments to the top of pyramid and as we get to the top gradually the levels of payment grow dramatically, which is based on no activity. To show the level of earning in this systems look at the following example:

When a marketer is supposed to bring four more marketers and they do the same thing and this goes on for 5 levels membership will continue to grow exponentially, so the pyramid would be as follows:

- Level 1 = 4 (10000 commission) = 40 dollars
- Level 2 = 4 + (4 × 4 = 16) = 20 (marketer) × 10000USD = 200000 USD
- Level 3 = 16 + (16 × 4 = 64) = 80 (marketer) × 10000 = 800000 USD
- Level 4 = 64 + (64 × 4 = 256) = 336 (marketer) × 10000 = 3360000 USD
- Level 5 = 336 n + (256 × 4 = 1024) = 1360 (marketer) × 10000 = 13600000 USD

Although the chance of getting to 5456 people is nearly zero but these calculation which are presented in so many presentation sessions are so attractive that persuades people to become a member of these companies.

After recognizing pyramid activities and their activity approach here are some companies which have worked in this area in Iran:

Ansarolmovahedin entrepreneurial company:

This company was first introduced in 2003 in Iran and its goal was said to be to help improve the economic situation through charity work so that in 2003 and 2004 the managers of this company became the most charitable people in Kermanshah and were encouraged by the mass media. Like Pentagona Pyramid Company, this company presented their members with some cards in which the owner of the card was supposed to write the name of three people and send the card to the company. Then the company sent those three people one of those cards each and then they had to fill the card and send it back. Then this company was based on cards and not goods, and members got their benefit just through circulation of cards. People had to get 6000 Tomans for each card which was 18000 for the three of them. 6000 of this amount was for themselves and they had to deposit 2000 under the name of the company and two 5000 under the names specified by the company. When this was extended and if it was done properly in the 8th level a total of 11 million tomans was deposited for the member.

Abarkooh entrepreneurial company:

Any new member in this company had to deposit 1300 tomans under the name of the company, 200 to mans under the names of four people out of the three in the list the company gave them and 500 tomans for the company itself. And then the new member became the 7th person in the list and the first person was out of the cycle. This had to go on until the new member became the first on the list and finally got out of the list in which level company claimed that 823543 people were depositing 200 tomans each to their name which was a sum of 165000000 tomans.

Pyramid marketing as its supporters sees it:

Some researchers believe that in Feq’h there are basis on which people can define pyramid marketing. The most important reasons they have are:

- Truth principle
  The meaning of this principle is that every activity is considered lawful and legal unless there is a reason to deny this fact; nobody can name some activity unlawful just on the basis of some probabilities. In this part on the basis of this principle we are to justify lawfulness of such activities.
  Some results from the truth principle:
  1- If there is a doubt whether or not some activity is legal, it should be considered as legal
  2- If there is a doubt in the trade being formal or non-formal, or there is a doubt in lawfulness, the truth principle says it is lawful.
  About pyramid contracts if there is a doubt and no specific reason for this contracts being unlawful, they are considered as healthy lawful activities.
  2. Pyramid activities in accordance with one of specific kinds of contracts

a. Contract law:
  Some suggest that as people can represent the first owner and sell goods on their behalf, in pyramid companies the case is the same and goods are sold on the behalf of their owners and indeed there is a
commission in between. Form this point of view pyramid companies are properly lawful and legal. It is like what happens in stock markets.

b. donation contract:
   in the view of the benefits made for the dealers (members) form the efforts made by sellers (new members), some tried to justify this benefit on the basis of donation contracts. They say that a sum of money can be paid to the seller as donation with no regard to the size of the deal and effort. This can be considered as the case in investment companies (companies with no goods or services) too. This is a solution for their problems too.

c. Reconciliation contract:
   The trade between the members can be justified on the basis of reconciliation. Especially in the companies where charity is the base for membership and money gathering. In the application forms titles like reconciliation and donation are seen frequently meaning that the new member is donation or conciliating the money to the company.

d. assignment contract:
   This kind of contract says that the assignee deserves some money for the work they are doing for the owner. Pyramid companies justify their activities on the same basis.

Rejecting all the reasons:
   - About the first explanation it must be said that truth principle is a principle and a principle can only be used if there is nothing to deny it. So the reason for the pyramid activities being unlawful is this. Secondly this principle is applicable as long as there is no condition in the contract we doubt. On the other hand if there is a doubt in one of the conditions of the contract, the common title of trade is not attributed to the contract.
   - About dealership and representative theory, and comparing such activities to those of stock market there are lots of contention bones. First in stock markets the good is presented to the buyer and it is bought by complete awareness of the good. But in pyramid companies there is no good given to the marketer and there is no good delivered to the buyer.
   Secondly in representation, the salary given to the representative is based on the efforts they make to sell the good but in pyramid companies this is not considered and higher level of the pyramid benefit without any effort.
   Third, issue of the dismissal and resignation is not considered is the pyramid companies and no member can be banned.
   Fourth, in representation the attorney deserves a salary for every level of activity but in pyramid activities the representative is not paid until the members get to a certain number. So representation is not a good justification for pyramid activities.
   Attribution to donation contracts is faced with major problems:
   1. Due to lack of donation, there is no donation occurring in the company.
   2. In donation contracts, donor must be the owner, in pyramid activities the donation to the members is paid by new members and not the company itself.
   3. In donation contracts the only thing considered is the characteristics of the member which is the thing which is not considered in pyramid contracts at all, what is important is the money paid. Basically new members don’t know the older members.
   So donation contracts are not a good justification for the pyramid activities.
   - To reject assignment contracts it is mentioned that in this kind of contracts, the assignee deserves a sum of money for their activities and if the work they have done is less than what wanted by the owner the salary must be on the basis of work. In pyramid companies each assignee must be benefited by the amount they sell and there must be no maximum or minimum for the sell. For example the owner cannot say that if there are less than 2 buyers there is no salary. If the point is to find customers, each customer must have its commission. On the other hand in pyramid activities it is not always the work which determines how much the benefit is, and sometimes the top of the pyramid gets a lot of benefit doing nothing.
   On the other hand the problem which was mentioned in donation contracts is not applicable to this part which is that in assignment contracts the commission is paid by the owner but in pyramid companies the marketer finds his own benefit marketing for the good and the company does not pay anything to them.
   - About reconciliation it must be mentioned that the intention to reconciliation is not found in pyramid activities. Regardless of the fact reconciliation on unlawful activities is forbidden. Applicants are eager to buy a good with a price higher than it is worth because they think they may benefit from it. In pyramid companies in which there is no good or service provided, interest rate is the motivation.
   4. Pyramid marketing contracts and Feq’h rules and regulations One. Risky nature of the pyramid activities
In such activities risk is so high that it is not negligible, and of it is not considered, norms say that the wealth is gone to waste. Late Mr. Saheb Javaher believes that risk is based on loss.

Religious leaders have rejected any risky activity on the basis of this principle including buying. In the case of pyramid companies, because of the passive nature of the good or service in question, the contract is kind of risky. On the other hand, this kind of activity is kind of foolish because the new member cannot be sure whether or not he can find a new member, because pyramid plans can saturate and there will be no room for new members.

Two. Prohibition of pyramid contracts on the basis of path denial principle

This principle which is based on the verse (do not let the non-believers find a path to dominate the believers) and it means that God does not want non-believers to dominate believers, then any action causing this is prohibited. This principle even forbids the marriage between a Muslim woman and a non-Muslim man, because it causes the domination of a non-Muslim over a Muslim and it strongly says that a Muslim attorney cannot defend a non-Muslim against a Muslim.

In a case where foreign countries recruit Muslims for pyramid activities, because this can lead to Muslims losing their control and dominance it can be rejected by the path denial. But this rule is only applicable to the companies which belong to non-Muslims.

Four. Quasi-Gamble in pyramid marketing

Gambling is defined as betting on a game which is played with some gamble tool. All the religious leaders have agreed that gambling is unlawful.

All the stand points about gambling say that it is a game, it is sometimes done through normal gamble tools or others. On the other hand gambling is associated with betting.

In pyramid marketing the two elements of gamble and bet are missing. First people enter such activities following trade, and on the other hand the condition that marketers have to find new members is not betting, because in betting the concept of competition is hidden. But in pyramid marketing there is no sign of competition between the members but everybody is trying to do the same thing which is finding new members.

But if we pay attention to the concept of gamble in the society we can consider the activities by the pyramid companies as gambling because they are both based on luck and there is a win-lose probability n both of them. Soni’s leaders who believe in comparison consider it gambling and feasible. Gambling because there is chance determining the win or lose part and it is feasible because the wealth is gained with no effort. The author thinks that it is hard to compare gambling and pyramid activities but from the result stand point, they are both the same. Anyway if we consider pyramid activities as gambling we must reject them.

Eight. The effect of denial by the legislator on the lawfulness of pyramid contracts

Denial does not cause the contract being expired. Religious leaders believe that banning does not lead to the expiration of a contract, but they all believe that if there is a doubt in the basis of a contract then it is expired. In the case of pyramid plans lots of religious leaders namely; Fazel lankarani, Makarem Shirazi, Nori Hamedani, Sane Sistani etc. have deeply thought about it and they said for sure that these plans are unlawful. All leaders suggest that if there is doubt in a part any contract it is rejected by law of sharia. The elements of a contract are subject, parties, intention, and direction of the trade. Most of the people denying these activities deny them on the basis of unlawfulness of the wealth. There are other reasons too, like systematic disorder which is caused by these activities and also subreption is another reason. In pyramid companies as experts say, 75-96 percent of partner lose their primary capital for ever. Because religious leaders do not accept pyramid marketing as a lawful activity so starting such activity is not lawful and any related work such as recruitment is illegal too and if there is money involved it must be paid back. In pyramid marketing there are numerous contracts which are all vain.

In 2004, legislators adjusted the law related to economic crimes (article 1): “institution, representation, and becoming a member in entities and groups benefit of which is based on recruitment and extending human chain is illegal”. In fact the legislator has rejected any kind of pyramid activity which causes the rejection of all the contracts made on that basis. Meaning that as the rejection by the religious leaders causes rejection of the contracts, the rejection by legislators does the same.

In addition to the subject, the direction of such contracts is rejected too. In article Z of the aforementioned law it is clarified that “any activity whose benefit is from recruitment is illegal” and from a criminal stand point it has all the definition components of a crime. So not only the subject but also the direction of such contracts is in question.

5- Pyramid marketing contracts from the aspect of lack or existence of contract principles Parties and their conditions.

In pyramid contracts first, and after constitution, there is a marketing contract signed between the company and the applicant. It means that the parties involved are the company and the first applicant. Then the new member starts finding new members. Now the question which arises at this point is that who are the two parties in the next marketing contract? The new member and existing members? Company with the new members?
Considering the conditions in the contract it seems that he contract is between the new member and the company and the existing member are merely mediums.

The parties involve are so important because if there is a law suit, regarding the fact that the contracts are all unlawful, the company is sued and not the member who has presented the company to the new member. Nevertheless from the aspect of civic responsibility the member presenting the new members can be sued too. Form this standpoint there is no difference whether the company is buying or selling or is merely circulating the money.

Also the two parties must be qualified. Companies who are registered legally are free to do according to their statute, which means that the qualification of the company is merely dependent on their statute which must be clarified at the beginning of a company’s work.

Normally in pyramid companies the subject of activity in the statute has nothing to do with pyramid marketing because if it is implied in the statute, they will not be registered as legal companies. Therefore these companies constitute a company with a different statute then start working in a field different than their job description. Article 118 in trade law of 1968 has set some limitation on the activities of a company. Although the article is for corporations, regarding the representation theory about the authorities of the managers, it can be considered as a common rule in all the organizations. According to this limitation, managers cannot act different to their statute. The meaning of the article 118 is that any activity other than what is said in the statute is illegal. So in the case of pyramid companies due to the fact that it is against their statute all their activities are illegal. This is what we call qualification of the company. On the other hand sometimes some member who sign the contract are underage (below 18) which is contraly with the article 211 of the civic law.

**The subject of the contract:**

According to the articles 214-216the subject must be some good or service which can guarantee some rational benefit and must be clear. In pyramid companies the subject is sometimes some good which is basically not seen and is merely a cover for pyramid activities. The good is also sold for a price so higher than what it is worth by the promise of finding new members. In the investment companies, the subject is only finding members. In the case of religious points of view it was mentioned that religious legislators suggest that these activities are unlawful. On the other hand because of the risk hidden in these activities, it is not wise to enter in such activities. Entering these activities does not guarantee any rational benefit and everybody including religious leaders and experts prohibit them.

**The direction of the contract:**

According to clause 4 of article 190 and article 217 of civic law the direction of the contract must be lawful. In fact one of the indicators of the contract being legal is lawfulness of its direction which falsifies the nature of the contract if it is not lawful. In article 217 of civic law we see “the direction of the contract must not necessarily be specified but if so it must be lawful otherwise the deal is illegal”. Direction means the intention by which the deal is made which does not make any harm as long as it does not enter the territory of the contract. Article 217 of civic law clarifies the same point. This article says that if the direction of some contract is mentioned, it must be lawful or the contract is not legal, but not mentioning the direction causes the contract to be legal. In pyramid companies the goal is to recruit more people and the purpose of recruiting more people is to earn money and as religious leaders have clarified this kind of activity unlawful so they are illegal too. So we can say for sure that the direction of activities is unlawful and illegal in marketing companies.

**RESULT AND CONCLUSION**

1. the reasons through which supporters try to justify pyramid activities, truth principle and types of contracts like representation, assignment, and donation is not correct because truth principle is applicable when there is no doubt about the conditions under which the contract is made while there are numerous reasons implying that pyramid activities are nor lawful. Attribution to certain kinds of contracts is not accepted because the conditions and requirements of those types are not met.

2. Pyramid marketing contracts are not beneficial and rational due to lack of a good or service being sold, ambiguity of the time the good or service is delivered, uncertainty in the fact that enough members can be recruited for the benefit limits of the company. Then they are prohibited.

3. Regarding the fact that being rejected by religious leaders makes these contracts unlawful, and this rejection goes back to the very nature of the conditions in the contract, these activities are rejected by law too, and in addition to unlawful they are illegal.

4. Due to the fact that companies register their statute and they are obliged to act in the framework of their statute, and pyramid companies start recruiting people through contracts which are not in this framework, the qualification of these companies is under question and they are not qualified to sign contracts.

5. Pyramid marketing contracts do not meet the requirements of needed conditions to make contracts.
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