



An Analytical Study on the Necessity of the Fiqhī-Legal Recognition of the Status of the Islamic Customary ‘Aqd Period

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ABSTRACT

The formation of the family has individual and social consequences. In the *fiqh* and legal sources, there is no specific criterion for determining the commencement of conjugal life and family formation. The apparent evidence from *fiqh* proofs and legal texts indicates that from the moment the '*ulqat al-zawjiyyah* (marital relationship) is contracted, all mutual rights and obligations of the spouses must be established; however, nowadays the "*dawrān-'aqd*" (the period of '*aqd*') has widely become recognized as a customary stage prior to the beginning of conjugal life, during which, despite the existence of the marital relationship, a family is not effectively formed. The challenge arising from this situation is the lack of a proper understanding of this period and the absence of appropriate regulations governing it. The examination of the necessity to identify the legal status of the customary *dawrān-'aqd* or '*urfi*' marriage contract or non-registered customary marriage is an issue without precedent and has been addressed in the present research. In this regard, the study seeks to answer the question: what are the *fiqh* foundations for recognizing the *dawrān-'aqd* empirically? Since the non-recognition of the *dawrān-'aqd* in the current situation causes problems in the fulfillment of the mutual rights of the spouses (such as *nafaqa* or maintenance or financial support and *tamkīn* or sexual availability or marital submission) and their deprivation of certain social rights, and given that "*namzadi*" (engagement) lacks *shar'ī* legitimacy, it is concluded that the *dawrān-'aqd* can serve as an appropriate institution to resolve these difficulties. Furthermore, considering the practical problems, proposals such as the necessity of official registration of its duration, determination of enforcement guarantees, and the requirement to legislate specific laws have been put forward.

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Introduction

Today, the gradual formation of the family institution has encountered a phenomenon known as the "*'aqd-i 'urfī period*" (customary engagement period)—a phase that lies between the formal marriage contract (*'aqd-i nikāh*) and the commencement of cohabitation. During this period, while the marital bond (*'alāqat-i zawjiyyah*) is established from both a Sharī'a and legal perspective, the practical realization of family life through shared living has not yet materialized. The absence of a clear definition and explicit legal regulations for this stage has led to extensive jurisprudential (*fiqhī*), legal, and social challenges, which this study seeks to address through an analytical and comparative approach.

Classical *fiqh* and legal sources provide no specific criterion to distinguish the inception of family life from the moment of marriage contract (*'aqd-i nikāh*). The apparent implications of jurisprudential evidence (*adillah*) and legal provisions (e.g., Articles 1102, 1106, and 1111 of the Civil Code) suggest that upon the conclusion of the marriage contract, all mutual rights and obligations—including *tamkīn* (conjugal obedience) and *nafaqah* (maintenance)—take effect. However, in contemporary society, couples often find themselves in a liminal state after the formal *'aqd* but before cohabitation, which is neither a mere engagement nor a complete marital union. This *'urfī* (customary) phase demands independent jurisprudential and legal analysis.

Methodology

This study employs:

1. **Textual analysis** of classical *fiqh* sources (Quranic verses, *ḥadīth*, and juristic principles) and modern Iranian civil law (e.g., the Family Protection Law of 2011).
2. **Comparative legal analysis** of judicial rulings to identify contradictions in courts' treatment of *'aqd-i 'urfī* cases.
3. **Critical evaluation** of social realities (e.g., delayed cohabitation trends) against traditional legal frameworks.

Key focus areas include:

The conditional nature of *nafaqah* and *tamkīn* on actual cohabitation (*tamkīn-i tāmm*).

Distinctions between *tamkīn-i āmm* (general obedience) and *tamkīn-i khāṣṣ* (sexual compliance).

Legal ambiguities in social rights (e.g., insurance coverage, family subsidies) for wives (*zawjah*) during *'aqd-i 'urfī*.

Findings

Jurisprudential Perspective:

Nafaqah and *tamkīn* obligations are contingent upon full cohabitation, not merely the '*aqd*'. This is supported by the principle of *barā'ah* (acquittal in cases of jurisprudential doubt) and the absence of explicit evidence mandating *nafaqah* without *tamkīn*.

Tamkīn (general or specific) is not an inherent requirement (*muqtaḍā-yi dhāt*) of the marriage contract. A stipulation (*shart*) delaying *tamkīn* until cohabitation is valid if it does not contradict Sharī'a.

1. Legal Challenges:

Current laws impose full marital consequences (e.g., termination of family subsidies) upon '*aqd*' registration, despite the absence of de facto family formation. This conflicts with social justice.

Judicial inconsistency arises in *mahr* (dower) claims during '*aqd-i 'urfi*', with courts often equating it to post-cohabitation claims (per Article 22 of the 2011 Family Protection Law).

2. Gaps in Enforcement:

Oral agreements on the '*aqd-i 'urfi*' duration (e.g., a 2-year delay) lack legal enforceability, leaving wives vulnerable.

The institution of *nāmzadī* (pre-marriage engagement) is critiqued as religiously untenable due to its potential for unregulated interaction (*ikhtilāt*) between non-*maḥram* individuals.

Conclusion

The study underscores the need for legal recognition of the '*aqd-i 'urfi*' period and proposes:

1. **Mandatory registration** of the '*aqd-i 'urfi*' duration in marriage documents.
2. **Distinction** between rights/obligations during '*aqd-i 'urfi*' and cohabitation (e.g., suspending *nafaqah* and *tamkīn* claims until cohabitation begins).
3. **Continuation of social rights** (e.g., subsidies) for the wife until cohabitation.
4. **Legal safeguards** against misuse of *mahr* claims during this period.

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