

Revisiting the Fiqhi Foundations of the Marital Bond after the Death of One Spouse, with Reference to Imami Ijtihadi Evidence

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| Article Info | ABSTRACT |
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| Article type: Research Article | The issue of the marital bond is a practical question in fiqh generally and in medical fiqh in particular. It concerns whether the spousal relationship continues or is dissolved upon the death of one of the spouses. This question can play an important role in ijtiḥād and the derivation of Shari'ah rulings across different areas of fiqh, and, because it is connected with preventing confusion of lineage and reproductive material, it may serve as a fiqhi framework in other chapters of jurisprudence. The central question of this article is whether death dissolves the marital bond. Using library-based data collection and analytical examination of the materials, the study identifies three views: dissolution of the marital bond upon death; continuation of the bond until the end of the waiting period of widowhood; and perpetual continuation of the marital bond. The arguments for each view are presented and the objections to them are answered. The article concludes that the third view, and the evidence supporting continuation of the marital bond after the death of one spouse, is stronger. At a minimum, if the ijtiḥadi evidence and texts are considered incomplete because of ambiguity or omission, the practical principles of bara'ah and istishab apply and again reinforce the third view. |
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Introduction

The question whether the marital bond continues or dissolves after the death of a spouse is a foundational issue in family fiqh, with effects in worship, civil law, criminal law, and medical jurisprudence. Although jurists have rarely treated the issue independently, they have addressed it in scattered discussions of maintenance, inheritance, the prohibition of certain forms of sexual enjoyment, washing and shrouding the deceased, and other rulings connected with marriage. The issue has acquired new importance in the contemporary period because of medical advances and the possibility of using the deceased husband's sperm in artificial insemination and posthumous reproduction. It has therefore become one of the pressing questions of medical fiqh.

The central question is whether death completely dissolves the spousal relationship, or whether a form of legally recognized continuation may be imagined - either until the end of the widow's waiting period or permanently. The answer directly affects the fiqhi assessment of artificial insemination after the husband's death. If the marital bond remains, such insemination may be examined within the framework of marriage; if the marriage is dissolved, the act faces serious Shari'ah obstacles. The same question also affects issues such as the wife's entitlement to maintenance, whether certain acts of enjoyment after death could fall under the title of zina, and other effects that depend on the continuing existence of marriage.

Methodology

This article is a qualitative descriptive-analytical study. Its purpose is to examine and analyze the concept under discussion within its textual and theoretical context. The research focuses on collecting, interpreting, and analyzing non-numerical data, including textual, conceptual, and theoretical materials, most of which are drawn from library sources, scholarly documents, fiqhi texts, and the writings of jurists and other scholars. At the descriptive stage, the author gathers relevant views, concepts, and theories from authoritative sources and presents them in an ordered and coherent manner. At the analytical stage, these views are critically examined in order to clarify the strengths and weaknesses of their reasoning and claims. The qualitative approach emphasizes depth of understanding, analysis of the content of the arguments, and identification of the stronger theory among the competing views. Logical analysis, comparative examination, and critical interpretation are used to uncover the hidden and multilayered dimensions of the problem. The data are analyzed inferentially and argumentatively, with the aim of offering a clearer and more useful framework for the issue.

Literature Review

Despite the practical and theoretical significance of the subject, only two articles have addressed it directly: one on the continuation of the marital bond

after the death of one spouse, and another on the marital bond after the husband's death for the purpose of artificial insemination of the wife. The main weakness of those studies lies in their method of data analysis, which leads to an incorrect conclusion in both works. First, the evidence is often raised in a dispersed manner within other discussions and is not examined independently and analytically. Second, their method and analysis lead them to treat death as dissolving the marital bond. By contrast, the evidence examined in the present study indicates the continuation of the marital bond after the death of one spouse. Practical principles such as *istishab* and *bara'ah* also support this conclusion. This inference is the turning point of the present article and was not reached by the previous studies. A systematic re-reading of the *ijtihadi* foundations of the issue and a careful evaluation of the evidence for each view are therefore necessary.

Findings

The first finding is that the marital bond refers to the legal relation created and recognized between spouses by the conclusion of the marriage contract. Specific Shari'ah effects, such as the right of sexual access, procreation, maintenance, and inheritance, are attached to that relation.

Second, the issue can be examined by reference to *ijtihadi* evidence, including the Qur'an and reports, as well as practical principles. In this study, however, the focus is placed on *ijtihadi* evidence as the principal source for deriving Shari'ah rulings.

Third, the issue can function as a general principle and guiding *fiqhi* framework for many newly emerging medical questions.

Fourth, the relevant reports may be divided according to their meaning into three groups: reports indicating dissolution of the marital bond immediately upon death; reports indicating continuation of the bond until the end of the waiting period for the woman, and, if one accepts certain reports establishing a waiting period for the man, until the end of that period as well; and reports indicating the permanent continuation of the marital bond.

Fifth, the overall body of evidence suggests that the third view is stronger: the marital bond is not dissolved by the death of one spouse, but continues permanently. Even if the *ijtihadi* evidence is not regarded as complete because of ambiguity or omission, the practical principles of *istishab* and *bara'ah* support the same result.

Discussion

Although some *fiqhi* studies have examined the marital bond after the death of one spouse, the present article is innovative in its comprehensive collection and enumeration of the evidence, its attention to details that clarify obscure aspects of the debate, and its method of data analysis and problem-solving.

These features lead to a new result on the issue and distinguish this study from previous works.

Conclusion

The preferred conclusion is that the marital bond is not dissolved by the death of one of the spouses, but continues after death. Although reliance on the verse concerning guarding the private parts does not prove the claim and may even suggest interruption of the bond after death, and although the report of Umm Salamah is not conclusive for this issue, other indicators prevent the argument for continuation from being undermined. These include the true use of the term *zawjah* for a deceased spouse and the rebuttal of the alleged necessary implication between the condition of non-restoration of the deceased and the disclosure of severance of the marital bond. If the *ijtihadi* evidence is considered incomplete because of ambiguity or omission, one must turn to practical principles. In this context, *istishab* and *bara'ah* generally support the continuation of the marital bond.

Declarations

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