

The Possibility of Attributing a Child Born of Zina to the Mother in Islamic Fiqh

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ABSTRACT

According to some Islamic narrations, the effects of legitimate lineage arise through a valid marriage, and lineage is recognized as the first right of the child after birth. The attribution of a child born of zina to the mother is disputed: the majority of Sunni and some Imami jurists, relying on certain narrations and rational proofs, affirm attachment, thereby acknowledging the child's inheritance from the mother and her relatives while negating any connection with the adulterer and analogizing them to children of li'ān. In contrast, the majority of Imami jurists and some Sunnis deny attachment, invoking the hadith of firāsh, authentic narrations, rational arguments, and the principle of caution, holding that although combining lineage with sin is not impossible, cases of zina are excluded from the subject of lineage for the above reasons. The main objective of this article is to examine jurists' views on attaching the lineage of a child of zina to the mother. The core disagreement is whether birth and the applicability of the term "walad" establish attachment, or whether the lack of a religiously valid marriage negates it. The research question is: What is the stance of jurists of both schools on this matter? Using a library method and a descriptive-analytical, comparative approach, the study concludes that "walad" linguistically applies to a child of zina, there is no specific proof negating filiation between mother and child, and the effects of lineage consequently apply due to this attachment.

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Introduction

Legitimate lineage is described in the Qur'an as one of God's favors and in Islamic reports as the first right of the human being after birth. It affects many areas of fiqh, including inheritance, maintenance, guardianship, marriage prohibitions, and civil identity. The issue of attributing a child born of zina to the mother has divided Islamic jurists. The study examines whether such attribution is possible and what legal effects follow.

Methodology

The research is descriptive-analytical and relies on fiqhi sources and prior studies. Data were collected through books, articles, and reports, then analyzed through comparative content analysis of the views of Islamic schools.

Literature Review

Previous research has mainly addressed the legal and fiqhi effects of illegitimate children, including testimony, judgment, maintenance, inheritance, custody, and identity. A comprehensive comparative and analytical study devoted specifically to the possibility of attributing a child born of zina to the mother across Islamic schools has not been found.

Findings

Two main views exist. The first, held by many Imami jurists and most Sunni jurists, accepts attribution of the child to the mother. Its arguments rely on reports, the sign of firash, the causal role of the mother in birth, and the apparent meaning of certain Qur'anic verses. The second view, held by a famous group of Imami jurists and some Hanafi and Shafi'i jurists, denies attribution. It relies on reports negating lineage and inheritance, including the hadith of firash and other narrations.

Discussion

Analysis of the evidence shows that the first view is stronger in the linguistic and semantic meaning of the word child. Reports such as those transmitted from Ishaq b. Ammar and Yunus b. Abd al-Rahman support attribution to the mother. The second view's reports mainly concern inheritance, not absolute lineage, and some of them suffer from weaknesses in chain or scope. The denial of attribution because of the unlawful relationship is not persuasive, since ordinary language and textual usage attribute the child to the mother.

Conclusion

The view accepting attribution of a child born of zina to the mother is stronger linguistically, textually, and rationally. Denial based on reports concerning inheritance cannot be extended to all effects of lineage. Attribution to the

mother should establish lineage-related effects such as maintenance and certain civil rights, while the connection to the adulterer remains negated. The study proposes that Iranian civil law, including Article 1167 of the Civil Code, be supplemented to expressly recognize attribution of the child to the mother and thereby fill a legal gap.

Declarations

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