



A Jurisprudential and Legal Examination of the Validity of Suspension in the Marriage Contract

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Introduction

Legal acts may be concluded either definitively (tanjīz) or contingently. The concept of a contingent contract is familiar in contemporary legal scholarship, where its validity is generally not disputed. A contingent contract may be described as making a matter dependent on a condition or qualification incorporated by the parties into their contractual declaration (Īzadpanāh, 1382/2003, p. 6). Suspension may concern the inshā' (the declaration by which the parties form the contract), the mansha' (the legal effect created by that declaration), or the muta'allaq al-mansha' (the object or subject matter to which that effect relates). Each form may have different consequences for the contract and for the parties' rights and obligations; distinguishing among them is therefore important when assessing contractual formation. In a sale, for example, the legal effect may be the transfer of an identified asset in exchange for a known countervalue, while the asset and countervalue relate to the respective parties.

The source text identifies disagreement among jurists over whether suspension concerns the declaration, the legal effect, or the object of that effect. It notes that 'Allāma al-Ḥillī, in Tadhkirat al-Fuqahā', does not regard the declaration of a contract as conditional upon a condition or description (1414 AH, vol. 17, p. 12). Against this background, the present study examines the jurisprudential and legal validity of suspension in the marriage contract. It considers the three forms of suspension from both perspectives and asks how the validity of a suspended marriage contract should be assessed.

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Research Method

The study follows a descriptive–analytical method. Materials and data were collected through note-taking (fish-bardārī), as stated in the Persian abstract

Findings

The findings indicate disagreement among jurists concerning the validity of contingent contracts and transactions, particularly the marriage contract. Reason and the concept of conditional obligation are identified as the principal jurisprudential arguments advanced by those who accept suspension in the inshā'. On this account, the condition attaches to the hay'a (the form or modality of the obligation). General scriptural evidence and the principle associated with the command «Fulfil the contracts» (awfū bi'l-'uqūd) are also invoked in support; the source presents this evidence as encompassing both contingent and definitive contracts.

Jurists who reject suspension in the inshā', by contrast, argue that the condition does not attach to the hay'a but to the mādda (the substance or content). They understand the declaration of obligation as absolute and unrestricted. Each side relies on rational and religious evidence to support its position.

The findings also emphasize that analysis requires distinguishing suspension in the inshā' from suspension in the mansha' and in the muta'allaq al-mansha'. The source observes that jurists have not examined in sufficient detail which of these forms applies when a contract is made dependent on the occurrence of a condition, or which forms are valid. It further suggests that some objections to the validity of suspension in marriage may stem from insufficient attention to these distinctions.

Conclusion

Because contingent transactions are common and their validity or invalidity has significant consequences, the jurisprudential and legal ruling on them requires more precise formulation. Jurists and legal scholars agree on the validity of definitive (tanjīz) contracts; their disagreement concerns contingent contracts. Accordingly, a judgment on the validity of a contingent marriage contract should not be stated without first identifying whether the suspension concerns the inshā', the mansha', or the muta'allaq al-mansha'. The Persian source calls for closer analysis of these distinctions rather than asserting the general validity of every form of suspension.

Keywords: Suspension in the inshā', suspension in the contract, suspension in the mansha', contingent contract, marriage contract