



## Research Paper

### Obligating Spouses to Treat Diseases Causing Marriage Annulment from the Perspective of Islamic Denominations of Jurisprudence

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HTTPS: 10.22034/MFU.2025.142861.1514

Received: July, 24, 2024

Accepted: October, 30, 2024

Available online: November, 04, 2024



#### Keywords:

Defect, Marriage, Illness, Treatment, Islamic Denominations of Jurisprudence.

#### Abstract

With the advancement and development of medical knowledge, many defects that were previously grounds for marriage annulment (*faskh al-nikāh*), such as leprosy (*judhām*), vitiligo (*baras*), congenital abnormalities, or impediments to sexual intercourse, are now treatable. The possibility of treating these defects raises the important question of compelling spouses to seek treatment from the perspective of Islamic Denominations of jurisprudence (*fiqh al-madhāhib al-Islāmīyya*). This study examines whether it is permissible to compel a spouse to treat defects that allow for marriage annulment when treatment is possible, or if treatment is not obligatory for the patient and the other spouse cannot force them to seek treatment, but only has the right to accept the marriage as is or annul it. Data for this research were collected through library research and analyzed using a descriptive-analytical method. The results indicate that in cases where treatment of the defect is readily available, either spouse can compel the other to remove the defect and treat the illness. Multiple rational and textual evidences support the obligation of treating defects when possible and the permissibility of compelling the other party to remove the defect. These include the obligation to prevent harm to oneself and others, the duty of good companionship (*husn al-mu'āshara*), the prohibition of neglecting spousal rights, the necessity of facilitating sexual availability (*tamkīn*), and the principle of strengthening family foundations.

Javanmard, E. and Yamrali, S. (2024). Obligating Spouses to Treat Diseases Causing Marriage Annulment from the Perspective of Islamic Denominations of Jurisprudence. *Comparative Studies on the Schools of Jurisprudence and its Principles*, 7(2), 247-227.

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## Extended Abstract

### 1- Introduction

Family is a sacred institution referred to as a firm covenant (*mūthāq ghalīz*). Islamic law places great importance on preserving this strong family bond and does not accept its instability. Based on this approach, Hanafi jurists believe that when two people are connected through marriage, each is obligated to endure the other's problems. Therefore, it is not appropriate to separate due to an illness or defect that has befallen the other; rather, it is obligatory to accompany themselves as much as possible. In this regard, Hanafi jurists have stated that a man has the right to compel a woman to remove a defect through surgery and treatment. However, if treatment becomes hopeless, he can then separate from her through divorce (*talāq*). Additionally, according to some Imamī jurists, if after the marriage contract (*aqd al-nikāh*), the husband discovers that his wife suffers from one of these defects and the condition is easily treatable, the other party has the right to compel the patient to remove the defect and treat the disease. This is because the sacred legislator greatly values family life and is not satisfied with people disrupting their lives over simple matters. However, some jurists believe that treating the disease is not essentially obligatory for the patient, and the other party cannot compel her/him to undergo surgery and remove the defect. Shafi'i jurists have emphasized that if the wife is defective and the husband asks her to remove the defect through surgery, treatment is not obligatory for her, and the husband has the choice to either accept the marriage in that state or annul it. Accordingly, treatment is a matter of right, not obligation, and the patient has full discretion to refuse treatment. This research will attempt to answer the following question: "If the husband or wife refuses to treat defects when treatment is possible, can they be compelled to do so?"

### 2- Method

This article uses a descriptive-analytical method to analyze library studies.

### 3- Result

There are numerous rational and traditional arguments that treatment of defects is obligatory when possible, and it is possible to compel the other party to remove the defect. These include the obligation to prevent harm to oneself and others, the duty of good companionship (*husn al-mu'āsharah*), the prohibition of wasting the spouse's rights, the necessity of providing the prerequisites for sexual submission (*tamkīn*), and the principle of strengthening the family foundation.

### 4- Conclusion

Most Hanafi and Maliki jurists, and some Imamī jurists, believe that it is permissible to compel the husband or wife to treat marital defects when treatment is possible. It is also obligatory for the patient to treat themselves, and the other party must wait for the treatment to be realized and not annul the marriage. On the other hand, Shafi'i jurists and some Imamī jurists believe that the husband or wife cannot compel the other party to treat and cure the disease because surgery carries great risk and hardship, and may result in an unfavorable outcome or cause physical impairment. Moreover, the husband does not have the right to treat the wife's defect, just as if the wife wants to do such a thing to prevent harm to herself, the husband cannot object because his harm is compensated by having the right to annul the marriage. By examining the arguments



of proponents and opponents, it became clear that the patient's refusal to undergo treatment conflicts with the principle of fulfilling the contract (*wafā bil-'aqd*), observing caution in marriage, the principle of no harm (*lā darar*), the principle of good companionship, and the principle of strengthening the family foundation. Therefore, in cases where the defect is treatable, both parties are obligated to seek treatment for themselves.

### **5- Funding**

There is no funding support.

### **6- Authors' contribution**

The authors contributed to the conceptualization and writing of the article. All authors approved the content of the manuscript and agreed on all aspects of the work.

### **7- Conflict of Interest**

Authors declared no conflict of interest.

### **8-Acknowledgments**

We are grateful to all the scientific advisors of this article.