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# "MARRIAGE AND DIVORCE RULINGS FOR MENTALLY ILL PATIENTS IN ISLAMIC LAW AND JURISPRUDENCE"

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## ABSTRACT

Marriage is one of the most important social and legal institutions recognized across all human societies. However, the marriage of individuals with mental illness poses numerous challenges in both legal and religious contexts. This study examines the legal and Sharia-based rulings concerning marriage and divorce involving individuals with mental disorders, focusing on Islamic jurisprudence and Iranian law. The main research question is: What are the legal and religious rulings regarding the marriage and divorce of individuals with mental illness? The findings suggest that Iranian family law tends to prioritize the protection of the healthy spouse rather than the individual with mental illness. For instance, Article 1123 of the Civil Code grants the right of annulment to the healthy party without offering protection to the affected spouse. Similarly, Clause 13 of Article 8 of the 1974 Family Protection Law allows a spouse to request a certificate of non-reconciliation—leading to divorce—if the other party is infertile. This study explores the types of mental illnesses that may affect the validity of marriage, the role of guardians in the marriage of such individuals, the right to annulment upon the onset of mental illness, and the legal rights of the spouses. Employing a descriptive-analytical method, the research draws on Islamic legal sources, statutory laws, and judicial precedents. The results reveal that Islamic jurisprudence recognizes certain mental disorders as grounds for annulment of marriage, and Iranian civil law similarly grants divorce rights in specific cases. Nevertheless, the lack of a clear legal definition for the severity of mental disorders that can invalidate marriage leads to interpretive challenges. The study concludes by offering legislative recommendations aimed at better protecting the rights of individuals with mental illness and their spouses.

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**KEYWORDS:** Marriage, Divorce, Mental Illness, Civil Code, Islamic Jurisprudence, Legal Guardianship, Annulment, Legal Protection.

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## 1. INTRODUCTION

Every contract or transaction generates specific legal effects for the parties involved, and the marriage contract is no exception. Even in cases where the parties are legally incapacitated, the marriage contract can still create significant legal consequences. The primary effect of the marriage contract is the establishment of a marital relationship between a man and a woman. If the marriage contract is validly concluded between an incapacitated person and their spouse, a marital relationship is formed, which brings with it rights and obligations for both parties. Another effect of such a marriage, particularly regarding incapacitated individuals, is the creation of responsibility for their legal guardian, who is obliged to provide maintenance for the incapacitated person's spouse and children from their assets. This responsibility becomes especially relevant depending on the type of legal incapacity of the individual. In other words, the guardian of the incapacitated person must ensure that maintenance for their spouse and children is paid from the incapacitated person's property. Additionally, when the time comes to pay the dowry, either the guardian or the incapacitated person must fulfill this obligation from the incapacitated person's assets. It is important to note that both the dowry and maintenance are among the financial consequences of the marriage contract, and these issues also apply in marriages involving incapacitated individuals. Therefore, if necessary, the maintenance and dowry will be provided from the incapacitated person's property. In general, the marriage contract establishes a marital relationship between a man and a woman, and this requires specific conditions for the marriage to be valid and legal. A marriage cannot be considered valid solely based on emotional inclination or affection; rather, the parties involved must meet conditions such as intent and will, legal capacity, and other necessary factors. (Shokri, 2009: 10)

Based on this, special regulations have been set for individuals who are legally incapacitated, particularly concerning the marriage contract. Although legal capacity is one of the essential conditions for the validity of the marriage contract, there are instances where individuals without legal capacity attempt to marry. In such cases, their marriage is considered legally void. However, for such individuals, conditions have been established under which they can take the necessary steps to conclude a marriage contract, provided that the conditions specified by law are met. Ultimately, the marriage of incapacitated individuals requires

supervision and approval by authorized persons. Despite their inability to manage their personal and financial affairs, a guardian or custodian is appointed to handle their affairs. Therefore, the marriage contract for incapacitated individuals, as a legal matter, also requires supervision and approval by legally authorized persons. Individuals classified as legally incapacitated, such as prodigals, mentally ill persons, or minors, must enter into marriage under the supervision and approval of their legal guardian or other authorized representatives. Particularly in the case of the mentally ill, as with other individuals, they cannot independently decide to marry; instead, their marriage must be overseen and conducted by their legal guardian or other authorized legal persons (Ghasemzadeh, 2001: 8).

## 2. CONCEPTUALIZATION

### *2.1. Concept Of Psychological Disorder*

"Psychological health is included within the broader concept of health, and health means the complete ability to perform social, psychological, and physical roles. Health is not merely the absence of disease or dysfunction." (Ganji, 2005: 10)

#### *First Section: Definition Of Psychological Disorder from a Scientific Perspective*

Psychological disorder, as a broad concept, has been examined in various scientific fields, including psychiatry, psychology, sociology, and law. The World Health Organization (WHO) defines mental health as: "Mental health is a state of well-being in which an individual can cope with the normal stresses of life, work productively, and contribute to their community." In psychology, psychological disorder is defined as a mental and emotional condition that disrupts an individual's behavior and impairs their ability to perform daily tasks. The American Psychiatric Association (APA) in its Diagnostic and Statistical Manual of Mental Disorders (DSM-5) categorizes psychological disorders into groups such as depression, anxiety, psychosis, personality disorders, and cognitive disorders.

#### *Section Two: Definition Of Mental Disorder in Jurisprudence and Law*

In Islamic jurisprudence, mental disorder is referred to as "insanity" (junoon), which means the loss of reason and the ability to discern and make decisions. In this context, junoon is understood as the dominance of darkness and obscurity over a person's consciousness, leading to the concealment of their

rational mind. Generally, *junoon* encompasses various mental and neurological disorders, whether they are permanent or temporary, congenital or acquired, and can vary in intensity. (Langroudi, 2008: 78) In Iranian civil law, Article 1207 of the Civil Code includes minors, insane individuals, and prodigals as those who are prohibited from performing certain legal actions. In Article 1121 of the Civil Code, insanity is also recognized as one of the grounds for the annulment of marriage.

## 2.2. Types Of Mental Disorders

The types of mental disorders that are related to the legal and jurisprudential discussion of *Safah* (imbecility) and *Junoon* (madness) are as follow, (Naraghi, 1417AH: 513) Among the Imami jurists, Mulla Ahmad Naraqī paid particular attention to the issue of mental illness and its legal rulings, considering it an important topic in jurisprudence. Mulla Ahmad Naraqī defines madness (*Junoon*) as follows:

**"Junoon, according to what appears in the books and writings of doctors, is not the name of a specific disease, but rather the name for all brain diseases that cause disruption and corruption of the mind. It is described as the corruption of the intellect. The term 'intellect' here refers to the corruption not only of the rational faculty itself but also of its associated faculties, such as the thinking and imaginative faculties, and others. Junoon has different types and varying effects. Therefore, madness has many forms."** According to the writings of doctors, *Junoon* is not a specific mental disorder, but rather includes various brain conditions that disrupt the functioning of the mind and cause its corruption. This corruption can occur either in the rational faculty itself or in the faculties associated with it, such as the faculties of thought and imagination.

**Junoon has different forms and varying effects. Psychology and jurisprudence have provided a classification, which is as follows:**

### 2.2.1. Intellectual Disability

Intellectual disability was first recognized as a medical and social issue in the early 19th century. Prior to that, individuals with intellectual disabilities were often referred to as "incapacitated" or "insane." Intellectual disability is a heterogeneous disorder characterized by below-average intellectual functioning and impaired adaptive skills, which manifest before the age of 18. The disorder is influenced by genetic, environmental, and psychosocial factors, and is classified into mild, moderate, and severe categories, all of which affect an individual's ability to make decisions. Intellectual

disability is defined in three levels, which reflect the extent of impairment to intellectual capacity: mild, moderate, and profound. (Ganji, 2014, p. 124)

### 2.2.2. Mild Intellectual Disability

Individuals with mild intellectual disability, according to DSM-IV definitions, cannot be considered examples of imbecility, and the rulings related to forgetfulness in Islamic jurisprudence do not apply to them. These individuals appear to have healthy reasoning and thinking abilities. Therefore, in religious practices and other matters, they follow the same rules as individuals of their category. This means that if they forget to perform certain religious duties, they must make up for them. However, in tasks that require alertness, such as judgment, testimony, confession, legal representation, divorce, and other legal matters, their actions are considered void. (Mohaghegh Damad, 2007, p. 880)

### 2.2.3. Moderate Intellectual Disability

In the past, individuals with moderate intellectual disabilities were referred to as "imbeciles." Most individuals in this category of intellectual disability learn basic social interaction skills during early childhood. They can benefit from vocational training. Individuals with severe intellectual disability, who make up about 3 to 4 percent of the total population of those with intellectual disabilities, either achieve very limited speech and social interaction in early childhood or gain no such skills at all. In adulthood, these individuals may be capable of performing simple tasks, but only under close supervision and with full support in all settings. (Shamlou, 1999: 306)

### 2.2.4. Profound Or Severe Intellectual Disability

Most individuals affected by this condition suffer from identifiable neurological impairments that are the underlying cause of their intellectual disability. During early childhood, they often show significant impairments in sensory-motor functioning. With consistent supervision and care in highly structured and supportive environments, they may achieve limited personal interaction and developmental progress under the guidance of a caregiver. These individuals require lifelong supervision and their linguistic and motor skills are extremely limited. According to the **DSM-IV** criteria, they appear to fall outside the scope of typical classifications and have historically been referred to as "insane" or suffering from mental corruption, a term used in earlier jurisprudence. (Dashti, 2000: 80) According to Naraqī's theory, who considered madness (*junūn*) as

one of the manifestations of mental corruption, such individuals – due to their intellectual incapacity – are categorized among the insane (*majānīn*). In his discussion of madness, as previously mentioned, Naraqī included all forms of mental corruption under the legal definition of insanity. Two of the most severe disorders often cited in this context are: Delirium or dementia, Amnesic disorders.

### 2.3. *The Effect of Insanity on the Dissolution of Marriage*

As soon as the marriage is properly contracted, rights and duties arise for the husband and wife, which legal scholars refer to as the effects of marriage. Article 1102 of the Civil Code states: As soon as the marriage is validly contracted, the marital relationship between the parties exists, and the rights and obligations of the spouses toward each other are established. (Safa'i & Emami, 2016: 117) Among the most important rights and duties of the wife are custody rights, the right to annul the marriage, maintenance, control over property and assets, the right to residence, good treatment, assistance, loyalty, and so forth. One of the causes of incapacity (legal disability), which has the greatest role and influence in the dissolution of marriage, is insanity. As mentioned, the Imami jurists define insanity as the corruption, defect, or disorder of the intellect. While acknowledging different types and forms of insanity, they have provided criteria for applying the term "insane" to a person. From their perspective, the application of this term is conditional on the individual's actions being the result of intellectual disorder to the extent that the person does not comprehend the impropriety of those actions. The Imami jurists have referred to the effect of insanity of one spouse on the dissolution of marriage in two instances: first, annulment of marriage by one of the spouses due to the insanity of the other party; and second, the divorce of an insane wife by her legal guardian or custodian. They base the effect of insanity on annulment of marriage on certain narrations, consensus among Imami jurists, and the principle of no harm. During his discussion on insanity and its impact on the dissolution of marriage, the scholar Mohaghegh Helli stated: the option to annul the marriage does not arise from a transient forgetfulness or a state of unconsciousness caused by an excess of yellow bile; rather, this option is established only if the condition is permanent. (Al-Hilli, 1992: 214) The Iranian Civil Code considers the insanity of either spouse, provided it is permanent – whether periodic or continuous – as one of the common defects and grounds for annulment of

marriage (Article 1121 of the Civil Code). Therefore, whether insanity is periodic or permanent, it is regarded as a cause for annulment of marriage (Safaei, 2005: 184). The question that arises is: What does the legislator mean by the condition of permanence in insanity? If the intention is to exclude transient forgetfulness, unconsciousness caused by emotional states, or epilepsy, this aligns with the view of the Imami jurists, who generally do not consider such cases as insanity. However, if the intention is to exclude temporary, sudden, and treatable insanity, as mentioned earlier, this remains a matter of jurisprudential debate. Insanity may exist before the marriage contract or may occur afterward. The legislator has distinguished between these two periods regarding the insanity of spouses. Insanity of the husband in both cases grants the wife the right to annul the marriage, whereas the insanity of the wife only grants this right if it occurred before the marriage contract. This is because the wife's insanity during marriage does not interrupt the provision for family livelihood, and the husband can either divorce the insane wife or resort to remarriage. (Katouzian, 2010: 283)

### 2.4. *The Impact of Mental Disorders on Divorce*

One of the grounds on which the wife can request a divorce from the court is her power of attorney from the husband to execute the divorce procedure. The authorization of the wife in divorce, in addition to Article 1119 of the Civil Code, is also mentioned in the twelve conditions outlined in section B of the marriage contract. According to the fourth condition of this section, if the husband becomes insane in cases where annulment of marriage is not religiously possible, the wife is authorized by the husband to carry out the divorce. In such cases, if the spouses have accepted this condition by signing below it, and if the wife is unable to annul the marriage due to the absence of annulment conditions (such as permanence, urgency, or lack of awareness of the defect), she can divorce herself by proxy from the husband.

### 2.5 *Husband*

The term "husband" is the opposite of "individual." Originally, this word means companion, associate, or partner and refers to either one of the male or female sexes of animals as a pair, and to both together as spouses. It is also used for each member of a similar pair without gender, such as a shoe and a horseshoe. In lexicographical works, generally, any individual who is coupled or accompanies another individual (similar or opposite)

is called a pair. Additionally, the term “pair” has been used to mean a type of colorful fabric that is spread over the roof of a sedan chair, and it also means color, kind, or category. (Al-Zabidi, 1990: 22) In summary, the original meaning of “pairing” refers to the conjunction and placing of two things side by side, which in the continuity of their existence, according to a specific plan and a particular course of movement, accompany, correspond to, and occur simultaneously with each other. This applies whether they carry masculine and feminine genders, such as animals and humans on Earth, or lack gender, such as night and day, even numbers, shoes, buttons, and paired organs in humans and animals like eyes, ears, hands, feet, and so forth. (Ibn Manzur, 1994: 56) In summary of the linguistic meaning, the essence of “marriage” is the union and placing together of two things that, according to a specific plan, continue to accompany, correspond, and mirror each other during their existence and unique course of movement. Whether they have masculine and feminine genders, like animals and humans on earth, or are without gender, such as night and day, even numbers, shoes, buttons, paired organs in humans and animals like eyes, ears, hands, feet, etc. Any two things that are related and similar or symmetrical and similar, or symmetrical and opposite, whether they have gender (masculine or feminine) or are genderless, are called pairs. Based on this definition, it can be said that all of creation is paired; because for everything there is either an opposite or a similar or something in its composition that prevents it from being solitary and self-centered. Ordinary Arabic speakers use the word “zawj” with an added “ha” to mean “spouse” for the feminine gender, but eloquent speakers use the word “zawj” for both feminine and masculine genders, not “spouse,” since the latter is a noun without further explanation. The application of the title “wife” to a woman is due to the fact that a woman and a man do not become pairs with anyone else; that is to say, the word “pair” (zawj) in the Qur’an is in the plural form without the meaning of “spouse.” (Javadi Amoli, 1996: 325)

### **3. MARRIAGE OF INCAPACITATED PERSONS AND ITS LEGAL CONSEQUENCES**

#### ***3.1. Legal Conditions for the Marriage of Incapacitated Persons***

Although incapacitated persons are prohibited from engaging in transactions and contracts and are unable to manage their own affairs, the conditions for their marriage are explicitly stated in the law. In any

case, if they desire, they can enter into a marriage contract. Different types of incapacitated persons are mentioned in the civil law, with varying conditions regarding the management of financial and non-financial matters. Since marriage is considered a non-financial matter, there are specific conditions for three main categories of incapacitated persons. In this section, the general conditions for the marriage contract applicable to the various types of incapacity will be examined. The conditions for the marriage of different types of incapacitated persons—such as the mentally ill, minors, and those lacking legal maturity—include both general and specific requirements. (Hosseini, 2014: 40) Therefore, first, the general conditions and then the specific conditions for the marriage of these individuals will be discussed.

#### ***3.2. Status Of Marriage Contract for Incapacitated Persons***

To examine the status of marriage for incapacitated persons, it is first necessary to consider the status of their legal transactions. Regarding a minor without discernment who has not reached puberty, all transactions they perform are void. However, for a minor with discernment who has reached the age of understanding, their financial transactions are voidable and their validity depends on the consent of the legal guardian. In the case of a permanent insane person, all transactions are void, whereas for a periodic insane person, transactions are only void during periods of insanity. A person deemed foolish (in financial matters) requires the permission of a guardian, but their non-financial transactions are valid. (Al-Kinani, 2017: 33) Regarding marriage of incapacitated persons, the marriage of a minor without discernment is void; however, if a minor with discernment enters into a marriage contract by themselves, the contract is voidable and requires ratification by the legal guardian. If a foolish person marries of their own accord, the marriage contract is valid, but financial matters such as the dowry require the guardian’s permission. A permanent insane person cannot marry by their own will, and such a marriage is void. For a periodic insane person, marriage by their own will is valid, but a virgin daughter requires the permission of the legal guardian. (Hosseini, 2014: 40)

#### ***3.3. General Conditions for the Marriage of Incapacitated Persons***

For the marriage of incapacitated persons, the general conditions required for the validity of contracts and agreements must be observed. These

conditions include the intention and consent of the parties, meaning that both parties to the marriage must have a genuine and internal willingness to enter into the marriage contract. In the case of incapacitated persons, this intention and consent must also be reviewed and approved by the legal guardian (wali qahri). Other conditions for the marriage of incapacitated persons include the legitimacy and definiteness of the subject matter of the contract. The marriage contract must be lawful and definite in order to be considered valid. Furthermore, the legal capacity of the parties to enter into the contract is a prerequisite in all contracts. Since incapacitated persons lack legal capacity, any marriage contract they enter into without proper authorization is invalid. However, marriage between two incapacitated individuals is possible, and under certain conditions, such marriage can be conducted legally and religiously. In such cases, the marriage contract requires the confirmation and ratification of the legal guardian. (Shokri, 2010: 20)

### 3.4. Specific Conditions for the Marriage of Incapacitated Persons

#### 3.4.1. Marriage of Minors

Minors refer to individuals who have not yet reached the age of puberty. According to the Civil Code, boys under 15 years old and girls under 9 years old are considered minors. These individuals are divided into two groups, **non-discernible minor**: A person who lacks the ability to understand and distinguish. For the marriage of such individuals, the permission of the legal guardian (Wali Qahri) is mandatory. If the marriage is not in their best interest, the guardian can prevent it. **Discernible minor**: A person who has some capacity to understand and distinguish. In some cases, the consent of the legal guardian is necessary. (Moghami-Nia & Khalasi, 2018: 60)

#### 3.4.2. Marriage of the Sufyah (Incapacitated Persons)

The Sufyah (incapacitated persons) are individuals who, due to a lack of sufficient understanding in financial matters, are unable to make proper decisions. These persons are considered legally incapacitated in managing financial affairs but are capable of making decisions in non-financial matters. Regarding marriage: For a male Sufyah: His marriage is conditional upon fulfilling general conditions such as intent and consent. For a female Sufyah: If she is a virgin, the permission of her legal guardian (Wali Qahri) is mandatory for marriage. In

all cases, the mahr (dowry) must be approved by the guardian or custodian. Unlike minors, whose marriage requires the guardian's permission, for the Sufyah the condition for the validity of the marriage contract pertains only to the approval of the mahr. In fact, if the agreed amount of mahr is not approved by the guardian or custodian of the Sufyah, the marriage contract cannot be validly concluded. (Alami & Alami, 2020: 118)

#### 3.4.3. Marriage Of the Insane (Majnoon)

The term "Majnoon" or insane person in the law refers to individuals who lack sufficient reasoning and understanding ability. These individuals are divided into two categories: permanent insane and periodic insane. **Permanent Insane**: A person who is always in a state of insanity. For the marriage of such a person, a medical diagnosis confirming the necessity of marriage, the permission of the legal guardian (wali qahri), and a court order from the public prosecutor must be obtained. **Periodic Insane**: A person who experiences periods of insanity but recovers during which they are capable of decision-making. This individual can independently decide to marry during their lucid intervals. As mentioned above, the insane, commonly referred to as "Majnoon," is someone who lacks adequate reasoning and understanding. Regarding marriage and divorce of the insane, according to the law, the marriage of insane persons is regulated by distinguishing between those with permanent insanity and those with periodic insanity. (Mousavi, Shariati & Mozaffari Siboni, 2020: 12)

#### 3.4.4. Divorce Of the Insane

According to Ja'fari jurisprudence (Imami school), the right to divorce is held by the husband; he may divorce his wife at any time without needing a specific reason. (Ibn Barraaj al-Trabalsi, 1986: 275) Regarding divorce or separation of insane individuals, these persons are divided into two categories: those with permanent insanity and those with periodic (or intermittent) insanity. (Yazdani, 2020: 200) The legal conditions and requirements for each category differ under civil law. When one of the spouses is insane, the conditions for divorce differ from other cases: **Divorce of a permanently insane person**, Since the individual lacks decision-making ability, the guardian or custodian must file for divorce on their behalf. This action requires the approval of a physician and the prosecutor's authorization. **Divorce of a periodically insane person**, during recovery periods, the periodically insane individual can initiate divorce themselves

because they possess full decision-making capacity during these times. In any case, decisions concerning marriage and divorce of insane persons are supervised by medical professionals and legal authorities to safeguard their individual rights and interests.

### **3.5. Wife's Power of Attorney in Divorce in Case of Husband's Insanity**

In Ja'fari jurisprudence (Imamiyyah fiqh), the delegation of the right to divorce from the husband to the wife is accepted by most jurists. (Yusuf ibn Mutahhar al-Hilli, 1990: 349) In other words, a man can grant his wife the power of attorney to perform the divorce on his behalf. This is justified by arguments such as there being no difference between a wife and others regarding the exercise of power of attorney and the general allowance of the wife's power of attorney for divorce. Furthermore, Islamic narrations do not provide any evidence against the validity of the wife's power of attorney in this matter. The Prophet Muhammad (peace be upon him) also allowed his wives to have the choice in divorce, which can be seen as an endorsement of this issue. (Najafi, n.d.: 32) Article 1119 of the Civil Code explicitly permits the wife's power of attorney in divorce. In the twelve conditions in the marriage contract, especially the fourth condition, it is stated that if the husband becomes insane, the wife may execute the divorce as his attorney. In such cases, even if the wife cannot annul the marriage, she can act on behalf of the husband to initiate divorce. Ja'fari jurists believe that the power of attorney contract is revoked in case of insanity or death of either the attorney or the principal. Article 678 of the Civil Code also confirms this matter and considers the annulment of the power of attorney contract upon insanity or death of one party. However, some jurists hold that if the power of attorney is stipulated as a condition within a necessary contract (such as the marriage contract), this power of attorney is protected from annulment due to the husband's insanity and cannot be considered void. Jurists have relied on this matter (*ibid.*) and, for other reasons such as the permissibility of the power of attorney contract, the nature of this contract being revocable, and the loss of legal capacity for obligation and disposition, they have also invoked these points. Accordingly, if insanity occurs to the husband (the agent), the power of attorney contract concluded between the spouses will be terminated. The question arises: given that such a condition is stipulated within the marriage contract, does the power of attorney still terminate upon the principal's insanity?

The majority of jurists, when ruling on the dissolution of the power of attorney due to the insanity of the principal or the agent, do not make exceptions to this ruling. Only one jurist argues that if the power of attorney is established as a condition, it is irrevocable, and that what is revocable is a contractual power of attorney. Moreover, if the power of attorney is stipulated as a condition within the contract, it cannot be revoked by dismissal, and its invalidity upon the death of the principal is also uncertain in this type of power of attorney. (Tabataba'i Yazdi, 1409 AH: 165)

Judicial practice also concurs with the opinion of the jurists on this matter and holds that if a power of attorney clause is stipulated within a necessary contract, such as a marriage contract, the power of attorney remains valid as long as insanity or death of either party has not occurred. Therefore, if insanity befalls the husband, his power of attorney for divorce will become invalid. Jurists also emphasize the legitimacy and validity of conditions stipulated within the marriage contract. Specifically, conditions that do not contradict Islamic legal principles are valid and enforceable. If these conditions conflict with definitive Islamic rulings, they are null and void. Most Imami jurists consider the presence of rational purpose as one of the conditions for the validity of the condition and regard any condition whose subject has no benefit according to reason as invalid. They have referred to various reasons for this, such as the futility of a useless condition, the lack of any right accruing to the beneficiary of the condition, and the interpretation of the principles mandating the fulfillment of conditions not applying to such cases. (Ansari Dezfuli, 1415 AH: 21) *Accordingly*, since the wife cannot benefit from this condition due to the dissolution of the power of attorney contract in the event of the husband's insanity, it can be said that the fourth condition mentioned in clause "B" of the marriage document is considered void. Moreover, one of the conditions for the validity of stipulations is their legitimacy. The Imami jurists unanimously agree on the invalidity of any condition that contradicts the Qur'an and Sunnah, and any condition that makes something lawful unlawful or unlawful lawful, based on the evidences related to the matter. (Musavi Khoei, 1414 AH: 93) Some contemporary jurists, in articulating criteria for determining a condition's contradiction with the Qur'an and Sunnah, hold that sometimes Sharia rulings may be subject to modification by a condition, while at other times they are so firmly established in their subject matter that they do not allow such modification. (Miralvandi, Fehresti &

Yaquti, 2022: 78) In this regard, some later jurists have also emphasized that conditions within the marriage contract may be subject to change if the Shariah interest (maslahah) is observed. If the legal guardian (wali) contracts the marriage on behalf of a minor husband and specific conditions benefiting the wife are stipulated in this contract, these conditions may be accepted and enforced provided the best interest of the husband is taken into account. However, if the guardian fails to observe the minor husband's interest in exercising his authority, those conditions will not be effective.

### **3.6. Request For Divorce Due To Hardship in the Case of the Husband's Insanity**

From the perspective of Imami jurists, a wife's experience of hardship and unbearable difficulty ('usr wa haraj) in continuing life with her husband constitutes a legitimate ground for requesting divorce. This jurisprudential principle was codified in 1982 with the amendment of Article 1130 of the Civil Code, and after further amendments in 1982, 1991, and 2002, specific instances of hardship—including the husband's insanity—were officially recognized as valid grounds for the dissolution of marriage. From a legal standpoint, the insanity of the husband is considered one of the clear manifestations of 'usr wa haraj, rendering cohabitation intolerable. According to clause five of the note appended to Article 1130 of the Civil Code, affliction with severe and incurable mental illnesses, including insanity, may constitute grounds for the wife to claim hardship. For a divorce decree to be issued on the basis of the husband's insanity, the condition must exist at the time the divorce petition is filed and at the time the court renders its judgment. (Katouzian, 2009: 386) Periodic insanity of the husband can cause hardship ('usr wa haraj) for the wife, and even if the husband is in a lucid interval at the time the divorce petition is filed, a divorce decree may still be issued because periodic insanity is characterized by relapses and remissions of symptoms and does not constitute complete recovery. Regarding temporary and non-permanent insanity, some hold that a divorce decree should only be granted if the husband's insanity is established and continuous, as only in such cases is continuing life intolerable for the wife. 'Usr wa haraj refers to a condition in which continuing life with the husband becomes difficult for the wife. Although permanent insanity is usually necessary for issuing a divorce decree, the wife may still suffer hardship due to the husband's temporary and non-established insanity. For example, behaviors resulting from the illness may damage the wife's family reputation or

cause her to detest the husband. Therefore, the court should not refuse to accept the divorce petition solely on the basis that the illness is not permanent. The criterion for establishing insanity may be the statistics related to the wife's hardship, but this can always be rebutted with evidence to the contrary. (Emami, 2006: 234) Court rulings on insanity as a cause of hardship ('usr wa haraj) for divorce vary. Some courts reject hardship claims if the husband improves with treatment, but the Supreme Court holds that treatability alone doesn't prove mental health. Both permanent and temporary insanity can cause hardship, especially if the wife's reputation or feelings are harmed. Legal definitions of "established insanity" are unclear, especially for periodic insanity. The wife's power of attorney for divorce becomes invalid if the husband is insane, but she can still seek divorce under civil law due to the husband's severe mental illness.

### **3.7. Laws Regarding Marriage and Insanity**

If either spouse suffers from established insanity—whether permanent or periodic—the other spouse has the legal right to annul the marriage. Temporary or fleeting insanity does not grant this right if the hardship caused is socially tolerable. Courts consider living with an insane spouse a clear case of hardship, which can justify a divorce request under the law. Since marriage requires mutual consent, if either spouse is insane at the time of contract formation, the marriage is considered void. The consent of a guardian does not validate a marriage if the spouse is permanently insane. However, when insanity is intermittent, guardianship remains valid, and a guardian may arrange marriage for the insane adult if it is deemed in their best interest.

### **3.8. Periodic Insanity of Husband and Wife in Marriage Annulment**

According to the law, if either spouse suffers from established insanity—whether permanent or periodic—the other spouse has the legal right to annul the marriage. Temporary or brief insanity that does not cause intolerable hardship does not provide this right, as such difficulties are considered socially acceptable. However, courts also recognize that living with an insane spouse can cause significant hardship ('usr wa haraj), which justifies the right to request divorce. Therefore, even if annulment is not possible due to the nature of the insanity, the affected spouse, typically the wife, can seek divorce to avoid harm and hardship. (Miralvandi, Fehrest & Yaquti, 2022: 299)

### 3.9. Periodic Insanity in Divorce

A person with periodic insanity cannot personally consent to divorce, so their own divorce is not valid. However, since the state of insanity may persist for a long time and continuing the marriage could harm the person, their legal representative is permitted to divorce the insane spouse. If the guardian is the legal guardian or custodian, no court approval or prosecutor's consent is required. Article 1137 of the Civil Code states: "A permanently insane person may be divorced by their guardian if it is in their best interest. However, if the insanity occurs after puberty and a guardian manages their affairs, the divorce proposal is made by the prosecutor." According to Article 88 of the Custodianship Law: "*If divorce of an insane wife is necessary, the guardian divorces her based on the prosecutor's proposal and court approval.*"

#### 3.9.1. The Role of Insanity in Annulment of Marriage

Some Imami jurists assert that there is a consensus (ijma') regarding the right of either spouse to annul the marriage if insanity occurs before the marriage contract, in both types of insanity. (Bahrani, 1985: 235) **The Role of Insanity in the Annulment of Marriage in Imami Jurisprudence** [In Islamic jurisprudence, both permanent and intermittent insanity are recognized as valid grounds for annulment if present before or after marriage. Jurists agree that if either spouse is insane prior to marriage, the other may annul the contract. Some also argue that since men can annul if the wife is insane before marriage, women should similarly have this right if the husband is insane, given women's limited access to divorce.] **The Role of Insanity in Annulment According to Iranian Civil Law** [Iranian legislation, following the Imami jurists and particularly the interpretation of Shahid Thani regarding the condition of "established insanity," considers insanity as a defect justifying annulment under Article 1121 of the Civil Code, without explicitly defining the term "established." According to one view, if insanity is a transient episode and does not remain permanently, it does not justify annulment because the harm caused by such a condition is considered tolerable by social standards.](katouzian, 2008: 384)

## 4. COMPARISON OF SCHIZOPHRENIA AND INSANITY

Legal scholars have stated regarding insanity: "Insanity is the attribute of a person who lacks the ability to discern benefit from harm and right from

wrong, and whose actions are aimless." Similarly, jurists hold that insanity is a disorder of the intellect, meaning that a person becomes detached in performing ordinary daily tasks and engages in purposeless acts. Based on investigations concerning insanity and mental illnesses such as schizophrenia, it has been determined that schizophrenia is a brain disorder that disrupts the normal functioning of many cognitive abilities, to the extent that it can be regarded as a form of intellectual corruption. From the perspective of certain jurists, including Naraq, it is considered a source of insanity. Schizophrenia, which is sometimes referred to as insanity, represents a prime example of the definitions and characteristics of insanity in jurisprudence. Accordingly, it can be accepted without hesitation that the legal rulings pertaining to insanity apply to these patients. Many psychologists use medications developed for controlling insane individuals to manage these patients, highlighting the similarity between mental illness and insanity. Kaplan notes, in line with psychological scholars, that a mentally ill person is someone whose personality structure has lost coherence and whose connection with reality is disrupted. These patients, while often engaging in purposeless acts, lack the ability to discern benefit from harm and the moral quality of their actions, and there is a risk of suicide among them. Psychologists also note that these individuals repeatedly commit aimless acts and exhibit sexual negligence. Sadock states that suicide is one of the leading causes of mortality among such patients. Given the above, and considering that some scholars believe psychological disturbances such as depression and emotional disorders—similar to insanity—can constitute grounds for annulment rights for the other party, it can be concluded that the traits and characteristics of a mentally ill person correspond to those of an insane individual, and in some cases even exceed them.

### 4.1. Comparison Of Personality Disorders and Insanity

Regarding insanity and mental illnesses such as personality disorders, legal scholars have stated: "Insanity is the attribute of a person who lacks the ability to discern benefit from harm and right from wrong, and whose actions are aimless." Jurists also hold that insanity is a disorder of the intellect, meaning that a person becomes detached while performing ordinary daily tasks and engages in purposeless acts. Personality disorders, based on medical data and clinical features outlined in the DSM-IV, can be considered a form of intellectual corruption and one of the defects that may justify

annulment of marriage. Although psychologists note that epidemiological studies with conclusive results on personality disorders are lacking, they assert that the hallmark of this group includes abnormal and eccentric behaviors, mistrust of one's spouse, unpredictable actions, and the potential for suicidal or self-harming behavior at any moment. If the disorder is chronic, the patient is persistently in a state of crisis. While they rarely reach the peak of their intellectual potential, their mood fluctuations are extremely high and highly unpredictable. Based on these observations, it can be concluded that the traits and characteristics of an individual with a personality disorder correspond to those of an insane person, and in some cases may even surpass them.

#### **4.2. Role Of Guardians in Minor Marriage**

Under Article 1043 of the Civil Code, only the father and paternal grandfather are explicitly recognized as legal guardians (*wali*) for a minor's marriage. According to Imam Khomeini's *Tahrir al-Wasileh*, these are the only persons authorized to act as guardians; other relatives, such as the mother, maternal or paternal grandmother, siblings, or uncles, have no authority. If the minor has no guardian, the court may appoint a custodian for financial matters (Articles 1180, 1184, 1187), but this custodian cannot authorize marriage. A marriage without the guardian's consent is considered voidable, and its validation depends on the guardian's approval or, if unavailable, the minor's ratification upon reaching adulthood. Court approval alone cannot replace the guardian's consent. Mental incapacity includes insanity, epilepsy causing intermittent incapacitation, and other disorders affecting cognition, but not ordinary foolishness. A primary reason for allowing annulment in these cases is the prevention of harm and the inability to achieve the intended purpose of marriage. Most jurists consider contracts made by mentally incapacitated individuals invalid; this applies to marriage as well. A mentally ill person cannot validly consent prior to marriage, and guardian approval does not legitimize the marriage. After marriage, jurists differ based on the type and severity of mental illness. Some hold that if insanity prevents understanding prayer times, the spouse may annul the marriage. Others allow annulment for the wife only, while a minority grants the wife annulment rights regardless of severity, since the husband already possesses the right to divorce. Civil law provisions support these rules: Articles 1124–1125 permit annulment if one spouse becomes insane after marriage, while Article 1213 states that

marriage with a mentally ill person is invalid even with guardian consent. Article 88 of the Law on Guardianship Affairs allows a guardian to marry off a mentally ill person only with court approval and medical verification. The Civil Code does not explicitly regulate the marriage of non-mature individuals, but Articles 1180 and 1218 provide guidance: minors under the father or paternal grandfather's guardianship require the guardian's consent; non-mature or mentally incapacitated individuals may require a court-appointed custodian, depending on whether incapacity is linked to childhood. Practically, the registry office should collect the individual's consent as well as the guardian's or custodian's, record it in official documents, and archive all supporting papers. Only the father or paternal grandfather can authorize a minor's marriage. Mentally ill individuals generally cannot validly marry; guardian consent cannot substitute for mental capacity. Marriage after the onset of mental incapacity may allow annulment, depending on severity and the affected party. Non-mature individuals require both their own consent and that of a guardian or custodian for marriage to be legally valid.

#### **4.3. Invalidity Of Marriage for an Incompetent Person Without Guardian Consent**

Most scholars agree that the marriage of a person who is financially incompetent is not valid without the consent of their guardian. Some add that the guardian may only approve the marriage if it is necessary for the person. This is because marriage involves financial obligations, such as the dowry and support of the spouse, which could harm the incompetent person, and a guardian is not allowed to take actions that cause harm. Some scholars argue that, like other financial matters, marriage is prohibited even with guardian consent if it risks the person's wealth. Certain schools of thought generally do not allow such marriages, while some permit it only when necessary and limit the financial obligations to a reasonable amount. Since marriage includes financial responsibilities and the person is restricted in managing their own finances, their marriage without guardian consent is considered invalid. Narrations and legal principles indicate that a competent adult may act for themselves, but an incompetent person cannot make independent decisions in matters affecting their welfare. Most scholars therefore consider marriage without guardian consent invalid, and some also require necessity and reasonable financial limits to protect the person's rights.

#### 4.4. Validity Of Marriage for an Incompetent Person Without Guardian Consent

Some scholars oppose limiting the marriage of an incompetent person to cases of necessity, arguing that doing so conflicts with the encouragement of marriage and procreation. They emphasize that an incompetent person is still mature and responsible for religious duties, including marriage. Certain contemporary scholars hold that marriage without guardian consent is valid. Among Sunni schools, only one group generally accepts such marriages, allowing them even if some financial obligations are involved, though limits are set to ensure fairness. Supporters of this view argue that marriage is a basic human need, and even an incompetent person has the right to marry for personal fulfillment. They maintain that incompetence only affects financial decisions, not non-financial matters, and marriage is primarily a personal, not financial, contract. Thus, guardian consent is not strictly required for marriage, even if the person cannot manage financial matters independently. Legal principles support the idea that every adult has control over their own life decisions unless otherwise restricted, and historical narrations indicate that a competent woman may marry without her guardian's permission. In civil law, there is no explicit provision regarding the marriage of an incompetent person, and legal scholars differ: some consider such marriages valid, while others require guardian approval due to indirect financial obligations.

#### 5. CONCLUSION

In the legal system of Iran, legally incapacitated individuals are classified into three groups: minors (*ṣiḡhār*), the feeble-minded (*sufahā*), and the insane (*majanīn*). These individuals are considered legally incompetent to engage in legal acts independently and are therefore placed under the guardianship of a legal guardian (*walī qahrī*). Regarding the marriage

of minors, the general principle is that their marriage is valid only with the permission of their guardian and in observance of their best interests, especially with the approval of a competent court. For non-discerning minors, whether male or female, marriage requires both the father's permission and court approval. In the case of a discerning female minor, only the father's or paternal grandfather's consent is required, and no court involvement is necessary. A discerning male minor, however, may contract marriage independently, provided it aligns with his best interest, and without needing the consent of a guardian or court. As for the feeble-minded (*sufahā*), who are unable to manage their financial affairs, their marriage is generally permissible since marriage is considered a non-financial act. If the feeble-minded individual is a girl, the permission of a guardian is required. However, a feeble-minded male can marry independently without the guardian's or custodian's consent, provided the marriage is in his best interest. Regarding the insane (*majanīn*), a permanently insane person cannot marry due to the absence of legal will and intent. In exceptional cases, if a medical professional certifies the suitability of marriage, a custodian may enter into marriage on behalf of the insane person with the prosecutor's authorization. On the other hand, a person with intermittent insanity (i.e., lucid intervals) may marry during periods of clarity. For a female in such a case, the consent of her father or paternal grandfather is required, whereas a male with intermittent insanity may marry independently. In conclusion, the general rule in Iranian law emphasizes the role of the guardian in marriage contracts involving incapacitated individuals. However, exceptions exist—especially in the cases of the feeble-minded and intermittently insane—where individual autonomy is prioritized. In certain circumstances or during periods of lucidity, these individuals may enjoy greater independence in decision-making regarding marriage.

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