

Causes of the Right to Annulment of Marriage in Iranian and Afghan Law

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Abstract: Marriage is a contractual relationship that requires the mutual consent and will of both parties. The purpose of this contract is to establish affection, kindness, and child-rearing. If this contract encounters deficiencies for various reasons, the continuation of the marital life may not be feasible. This study aims to conduct a comparative analysis of the grounds for annulment of marriage in Iran and Afghanistan. The research specifically addresses the grounds for annulment and demonstrates that, according to the jurisprudence of both Shiite and Sunni sects, as well as the legal texts in both countries, there are many similarities and some differences. For instance, similarities in annulment grounds include issues such as lian (a specific type of marital declaration) and insanity of the husband or wife. On the other hand, differences include aspects such as annulment of marriage with foreign nationals under Iranian civil law, which is not recognized under Afghan civil law, among other issues. Examining these and other jurisprudential and legal aspects of the two neighboring Muslim countries facilitates intellectual and cultural exchanges between them, fostering scientific interactions and the optimal utilization of each other's spiritual assets. This approach aligns with the efforts of Sheikh Shaltut (may Allah have mercy on him), who dedicated much of his life to the rapprochement of Islamic sects and left a significant legacy in this regard. It is hoped that such research will revive this spirit among the people of both lands.

Keywords: marriage, Iran, Afghanistan, annulment of marriage, grounds

Introduction

Marriage is one of the most fundamental and significant events in life, and it must be conducted with great care and thorough examination. In essence, for the establishment of the family institution, men and women must meet the conditions of marriage. However, some marriages, due to various reasons such as the insanity of a spouse or negative traits, are not valid and can disrupt marital life. For this reason, civil laws have included provisions to allow for the annulment of undesirable marriages (Islami-Najjad, 2017: 34).

For example, many civil laws specify particular conditions for the annulment of marriage. These laws generally state that both men and women must possess mental and physical health, enter into marriage voluntarily, and not be married to more than one spouse simultaneously. Additionally, many of these civil laws have sought to align

with Islamic law and jurisprudence by setting specific conditions for marriage with non-mahram individuals and defining the number of individuals who are considered mahram and with whom marriage is not permissible. Consequently, many Islamic countries with civil laws based on Islamic jurisprudence share common features. The aim of this research is to examine the grounds for annulment of marriage in the legal systems of Iran and Afghanistan (as neighboring countries with shared characteristics) (Sadeghi, 2019: 33).

The study of the legal grounds for annulment of marriage in Iran and Afghanistan is significant because both countries are Islamic, and many of their civil and marital laws are derived from Islamic jurisprudence and their respective sects. However, due to the predominance of Sunni Islam in Afghanistan and Shia Islam in Iran, which influence their civil laws, the researcher aims to reveal the differences in the laws of marriage annulment between these two countries.

Research Proposal

1.1 Problem Statement

Marriage is a significant and fundamental phenomenon in human life, referred to in jurisprudential terms as "nikah." It denotes the lawful and legal union of a man and woman for the purpose of forming a family, fulfilling emotional and sexual needs, and achieving tranquility in marital life. In another definition, this element represents the union and solidarity between husband and wife, sexual intercourse, formal contract, and mutual commitment (Hosseini, 2018: 44).

Based on these definitions, scholars and experts have concluded that a valid marriage can form the basis for a successful marital relationship and directly or indirectly influence social life and child-rearing practices. However, marriages are not always successful, and in certain situations, legal obstacles may arise that make it impossible to enter into or continue a marital contract (Nazari Pour, 2020: 55). In fact, there are cases where spouses have specific conditions that, for various reasons, make it impossible to maintain the marital relationship, necessitating separation. Accordingly, different countries have established specific legal rules for the annulment of marriage to minimize the vulnerability of both women and men (Islami-Najjad, 2017: 110).

Legal annulment of marriage refers to laws enacted by the state and applied according to the conditions and requirements of individuals. These laws, in some Islamic countries, are based on religious and doctrinal principles and are enacted in accordance with religious directives. Among such Islamic countries are Iran and Afghanistan, two neighboring and culturally, religiously, and socially similar nations. Due to these similarities, the researcher aims to conduct a comparative study of the legal grounds for annulment of marriage in these two countries (Afshari Fazl, 2017: 87).

Iran and Afghanistan have extensive interactions in matters of marriage, economy, culture, and more, with many young people from these two countries marrying each other annually. Both countries are Islamic, and most of their legal principles are based on religious teachings (Sadeghi, 2019: 33). Therefore, understanding the legal conditions for the annulment of marriage in these two countries can enhance the awareness of couples, law students, and relevant professionals about the legal similarities and differences between these two states. This can pave the way for amending and improving certain legal provisions to facilitate and prevent harm to women and men in society. By examining the conditions for legal annulment of marriage in these two countries, it is possible to identify legal weaknesses and create favorable and non-threatening conditions for marriage in society.

Thus, given the importance of marriage and the conditions for its annulment in various legal principles, and considering that these issues have not been studied in the context of the two neighboring and Islamic countries of Iran and Afghanistan, the objective of this study is to explore the conditions for the annulment of marriage in these two countries.

1.2 Objectives of the Study

1. To examine the grounds for annulment of marriage in Iranian law.
2. To investigate the grounds for annulment of marriage in Afghan law.

1.3 Research Questions

1. What are the grounds for annulment of marriage in Iranian law?
2. What are the grounds for annulment of marriage in Afghan law?

Hypothesis: There are many similarities between Iranian and Afghan laws regarding the grounds for annulment of marriage.

1.4 Conceptual Definitions of Research Variables

a) **Nikah (Marriage):** Nikah is an emotional and legal relationship established through a contract between a man and a woman, granting them the right to live together. This relationship prominently includes the right to sexual enjoyment. Additionally, nikah is a contract through which a man and woman unite to form a family and participate in life together (Sarkhasi, 1995: 197).

b) **Annulment of Marriage:** The annulment of marriage refers to the termination of the marital and emotional relationship through various means. Reasons for annulment include the spouse's minority, disbelief, lian (a specific form of marital declaration), and others (Bahadori, 2017: 112).

1.5 Scope of the Study

a) **Thematic Scope:** The aim of this study is to explore the legal grounds for annulment of marriage in Iranian and Afghan law.

b) **Geographical Scope:** This study will be conducted through a review of relevant articles and books concerning the grounds for annulment of marriage in the laws of Iran and Afghanistan.

c) **Temporal Scope:** This research was conducted in the year 2021.

1.6 Importance and Necessity of the Study

Marriage is one of the most significant events in a person's life and must be conducted with care. If not given due consideration, it can lead to numerous problems. Therefore, legal systems around the world have specific conditions for annulment of marriage to prevent harm to the parties involved (Mirzaei, 2020: 19). Iran and Afghanistan, having cultural, religious, and social similarities, are examples of countries that have provisions for annulment of marriage. A comparative study of these conditions in both countries is essential.

The comparative study of these two countries is important for the following reasons:

1. Such a comparative study has not been previously conducted between Iran and Afghanistan, creating a research gap.

2. This study can highlight the legal similarities and differences between the two countries and enhance the knowledge of researchers and students interested in this area.

3. It can help prevent harm to the youth of both countries.

4. Given that many Iranian and Afghan individuals marry each other annually, a comprehensive study of the legal foundations in both countries is necessary to facilitate understanding and adjustment of ineffective legal principles, thereby reducing marital conflicts.

1.7 Brief Literature Review

Ali Zadeh Nougabi, in a study on the legal conditions for annulment of marriage, found that prohibited relationships due to blood ties are a primary condition. Specifically, marriage to a sister, brother, mother, aunt, etc., is forbidden. He noted that marriage to the mother and grandmothers of the wife is prohibited in any degree, regardless of whether sexual intercourse has occurred. However, the study did not address the philosophical basis for the prohibition of marriage to relatives, which is a complex issue requiring detailed scientific investigation (Ali Zadeh, 2019: 121).

Moshidi, Amiri Nia, and Pourjavaheri also concluded that minority is a condition for annulment of marriage. In legal terms, minority means that individuals have not yet reached physical maturity and their sexual organs have not fully developed. In such cases, marriage is invalid until full maturity occurs. The study did not address opposing viewpoints or the justification for the annulment or validity of marriage for minors from the perspective of fathers and grandfathers (Moshidi and Pourjavaheri, 2020: 22).

Mahdavi examined the conditions for annulment of marriage in Afghanistan and found significant similarities with other Islamic countries. In Afghanistan, conditions

for annulment include illicit relations with a married woman, relations stemming from nursing, and close kinship through nursing. The researcher did not consider the general principle of prohibitions beyond sectarian boundaries (Mahdi, 2019: 12).

Halimi's study on Afghan law revealed that if a wife is rebellious and refuses her husband's demands, he can seek a divorce through the court. The principle of rebellion, which is reflected in all legal systems, has specific consequences (Halimi, 2019: 13).

Shahrokh and Taiee found that lian is a major obstacle to marriage. Lian involves a husband accusing his wife of adultery or denying paternity, leading to annulment after both parties testify in court.

Asadi, in a study on Iranian law, identified various conditions for annulment of marriage, including minority, prohibited relationships, pilgrimage, lian, disbelief, third divorce, waiting period, marriage to a married woman, and kinship through nursing (Asadi, 2017: 49).

The current research is distinguished by its comprehensive examination of both Iranian and Afghan legal systems with a focus on both jurisprudential and legal perspectives.

1.8 Research Methodology

This study employs a library-based and analytical-descriptive method.

1. Population and Sampling Method: The research population includes all books, articles, and other documents related to the civil laws of Iran and Afghanistan.

2. Methods and Data Analysis: In descriptive-analytical studies, the aim is to uncover, visualize, and explain the existing conditions and various aspects of the issue. For this purpose, a reliable source is needed to present general information about a phenomenon. The method of data analysis is descriptive-inferential: initially, the researcher provides a description of the issue using reliable information and then, through detailed analysis, draws general conclusions. Finally, the main components are extracted and systematically presented.

1.9 Foundations of the Right to Dissolve Marriage

a) The Principle of No Harm (Lā ḍarar)

The fundamental and most important basis for dissolving a marriage due to defects is the principle of "No Harm" (Lā ḍarar). This principle is derived from the well-known Hadith of the Prophet Muhammad (peace be upon him), "Lā ḍarar wa lā ḍirār fi al-Islām" (There is no harm and no reciprocating harm in Islam). This principle is one of the most recognized legal principles in Islamic jurisprudence and is referenced in many areas of Islamic law, including transactions and acts of worship. It can also be effective in various social and political contexts. The significance of this principle is such that all jurists, from early to later periods, have written treatises on its explanation and description. (Refaii & Habibi Noudi, 1389: 90).

Human reason and psyche affirm the legitimacy of this principle because, without its implementation, the fabric and foundation of a society would collapse. In fact, this principle falls under the category of "Independent Rational Judgments" (Mustaqillat 'Aqliyyah); meaning that reason independently recognizes it without the need for religious texts. On this basis, the consensus among rational thinkers and intellectuals is that economic transactions, social interactions, and relationships must be based on the principle of avoiding harm to one another; otherwise, they will have little value or credibility.

b) The Principle of No Hardship (Lā ḥaraj)

The second basis for defects that lead to the dissolution of marriage is the well-known and frequently applied principle of "Negating Hardship and Distress" (Lā ḥaraj). "'Asr" (hardship) is contrasted with "Yusr" (ease) and means difficulty and distress. "Ḥaraj" in the literal sense means "narrowness, being in distress, or sinfulness." In the Holy Qur'an, "ḥaraj" is used in these meanings: "Allah does not wish to place you in difficulty but He wishes to purify you." (Yusuf Panah, 1379: 122).

It is also necessary to mention that the criteria for hardship and distress are based on common understanding, and in common usage, both terms are often seen as synonymous. Hence, if we use the common meaning as a standard, the equivalence between these two concepts is maintained. This principle, like the well-known principle of "No Harm," is highly valid from the perspective of its sources and has verses in the Qur'an that confirm it. (Rezvani, 1389: 124).

Causes for the Right to Dissolve Marriage in Iranian Law and the Jurisprudence of Both Sects

Causes for Dissolution of Marriage According to Iranian Law and the Jurisprudence of the Shi'a and Sunni Sects:

1: Dissolution of Marriage Due to Li'an

Li'an and *mala'na* refer to the act of cursing and condemning someone to be cast away from goodness. In legal and jurisprudential terminology, Li'an is a process where the husband and wife mutually curse each other in front of a judge to nullify accusations of adultery and to deny paternity. (Shahrokh & Ta'i, 2017: 20).

Li'an begins when a man (husband) accuses his wife of adultery or denies paternity of a child born to her. The husband must repeat his accusation four times with an oath in the presence of an Islamic judge, and on the fifth occasion, he declares: "May God's curse be upon me if I am lying." Subsequently, the wife must swear four times that her husband is clearly lying, and on the fifth time, she declares: "May God's anger be upon me if he is telling the truth." After this procedure, the marriage is dissolved, and the husband and wife are separated. The wife becomes permanently prohibited for the husband, and they cannot remarry. If the issue of Li'an concerns the denial of a child, the child is not considered the husband's. Additionally, the punishment for both

parties is nullified; thus, the husband will not be flogged for the accusation of adultery, and the wife will not be stoned for adultery. (Pour Mohammad et al., 2019: 13).

In Shia jurisprudence, Li'an has the following rulings:

The husband must have seen the act of adultery (sexual intercourse in any form) with his own eyes. The woman subject to Li'an must be the permanent wife of a man. A woman known and reputed for adultery cannot be subjected to Li'an.

2: Annulment of Marriage Due to Ihram

Ihram, in its literal sense, means prohibition and making something forbidden. In legal and jurisprudential terminology, Ihram refers to a state assumed by a pilgrim when performing religious rituals and wearing specific garments that mark the beginning of the Hajj pilgrimage. Such a person is referred to as being in a state of Ihram. (Ayubi et al., 2011: 63).

Article 1053 of the Civil Code states: "A marriage contracted during Ihram is invalid, and if the prohibition is known, it results in perpetual prohibition." (Ali-Shahi Qaleh Joughi, 2021: 163).

If a marriage is contracted during Ihram out of ignorance, it is invalid, but it does not result in eternal prohibition. The person in Ihram can remarry the same partner after exiting Ihram, regardless of whether or not sexual relations occurred. However, if the marriage is knowingly contracted during Ihram, it is invalid and results in perpetual prohibition. According to this article, if a person in Ihram is aware of the prohibition of marriage, that woman will be permanently prohibited to him, even if sexual relations have not occurred. (Harafat, 2010: 145).

3: Annulment of Marriage Due to Apostasy

Another cause for the annulment of marriage is the marriage between a non-Muslim man and a Muslim woman, or between a Muslim man and a non-Muslim or kafir woman. Most scholars believe that if a Muslim man intends to have a permanent marriage with a non-Muslim woman, she must convert to Islam; otherwise, the marriage can only be temporary. It is also said that permanent marriage with non-Muslim women or those from other religions, such as Jews and Christians, is not permissible.

4: Annulment and Prohibition of Marriage Due to the Third Divorce

The term "third divorce" or "triple divorce" refers to a woman who has been divorced three times by her husband. A triple divorce means the negation of reconciliation and the possibility of remarrying the same man unless the woman has married another man (to act as a "halal" or lawful intermediary) and this man dies or divorces her. There is significant disagreement among scholars regarding triple divorce.

According to Shia jurisprudence, triple divorce occurs when a husband divorces his wife, then marries her again either during or after her waiting period (iddah), then

divorces her a second time, and marries her again either during or after her waiting period, and finally divorces her a third time. This woman is considered to have received a triple divorce. As seen, triple divorce happens in three stages and three separate periods. In Shia jurisprudence, a husband cannot give three divorces at once. In Sunni jurisprudence, giving three divorces in one sitting is considered valid, and they believe that pronouncing "divorce" three times in one instance results in a triple divorce. Some people have even used letters, phone calls, and recently messaging apps to issue divorces.

5: Prohibition and Annulment Due to the Ninth Divorce

If a husband, after divorcing his wife three times and marrying her again after she has married another man (or after that man has died or legally divorced her), divorces her three more times, she becomes permanently prohibited to him. For her to become lawful again, she must marry another man and this man must die or divorce her. If the husband divorces her seven times and divorces her three times as before, after the ninth divorce, if all previous divorces were "idah" (pronounced during the waiting period), she becomes permanently prohibited to him. However, if these divorces were not "idah" or some of them were not "idah", according to the majority view, she does not become permanently prohibited. Some modern scholars have contested the idea of perpetual prohibition after nine divorces, arguing that such prohibition may not apply in cases of non-"idah" divorces. (Ali-Zadeh, 2019: 43).

6: Annulment of Marriage Due to Iddah

According to Article 1150 of the Civil Code: "Iddah refers to the period during which a woman, whose marriage has been dissolved, cannot marry another man." Iddah has various forms: iddah due to death, iddah due to doubtful intercourse, iddah due to divorce, and iddah due to the expiration of a fixed-term marriage. (Amini, 2017: 76).

Articles 1150 to 1157 of the Civil Code address iddah: (Saadatkhan, 2004: 88).

Article 1150: Iddah is the period during which a woman whose marriage has been dissolved cannot marry another man.

Article 1151: The iddah for divorce and annulment of marriage is three menstrual cycles, unless the woman, due to her age, does not have menstrual periods, in which case the iddah is three months.

Article 1152: The iddah for divorce, annulment of marriage, and the expiration of a fixed-term marriage for a non-pregnant woman is two menstrual cycles, unless the woman, due to her age, does not have menstrual periods, in which case the iddah is forty-five days.

Article 1153: The iddah for a pregnant woman, whether due to divorce or annulment of marriage, is until childbirth.

Article 1154: The iddah for death, whether in a permanent or temporary marriage, is four months and ten days, unless the woman is pregnant, in which case the iddah

extends until childbirth, provided that the interval between the husband's death and childbirth is more than four months and ten days. Otherwise, the iddah remains four months and ten days.

Article 1155: A woman with whom sexual relations have not occurred, and a postmenopausal woman, do not have an iddah for divorce or annulment of marriage but must observe the iddah for death in both cases.

Article 1156: A woman whose husband has been absent and presumed dead, and who has been divorced by a judge, must observe the iddah for death from the date of the divorce.

Article 1157: A woman who has had doubtful intercourse must observe the iddah for divorce.

7: Annulment and Prohibition of Marriage Due to Adultery with a Married Woman

The invalidity of marriage and contract with a woman who is married or in her iddah period persists even if one or both parties are unaware of the prohibitions or obstacles. In cases where a woman believes her husband to be deceased and marries on that basis, the marriage is still invalid, and it is subject to the rules regarding doubtful intercourse. (Rahbari, 2009: 78).

If a man and woman are unaware of the marital status or the prohibition of marriage, and they learn of it before consummation and then separate, there will be no eternal prohibition between them. They can remarry after the dissolution of the marriage and the completion of the iddah. However, if the marriage is annulled on these grounds and consummation occurs, it is considered adultery, and according to Article 1054 of the Civil Code, adultery with a married woman or a woman in her iddah period results in eternal prohibition. (Sardouei, 2015: 81).

8: Annulment and Prohibition Due to Marriage with Foreign Nationals

Iranian civil law specifies certain prohibitions regarding marriage with foreigners. According to Articles 1060 and 1061 of the Civil Code, marriage of Iranian men to foreign women is permitted, except for government employees, particularly those working for the Ministry of Foreign Affairs, who are prohibited from such marriages due to political risks. However, Iranian women marrying non-Iranian men must obtain approval from Iranian authorities. Article 1059 of the Civil Code states: "Marriage of a Muslim woman to a non-Muslim is not allowed." Article 1060 specifies: "Marriage of an Iranian woman to a foreign national, in cases where there is no legal prohibition, is subject to special permission from the government." Article 1061 further states: "The government may require special permission for some government employees and officials to marry a foreign national woman." (Ali Zadeh, 2019: 89).

These legal provisions reflect the legislator's concern with the political aspects of such marriages. According to Iranian law and that of some other countries, women lose

their nationality upon marriage to a foreigner. It is well-established that marriages between Muslim Iranian women and non-Muslim men, whether Iranian or foreign, as well as between Muslim men and non-Muslim or non-scriptural women, are considered invalid by Islamic scholars across all Islamic sects. Marriages between non-Muslim Iranian men and women and foreign nationals are evaluated based on their own religious beliefs. If such marriages are deemed permissible from a religious perspective, then the issue of foreign nationality arises, and Iranian women can marry foreign men only with government permission.

9: Annulment of Marriage Due to Insanity

Common defect or insanity: A common defect is a condition affecting either spouse that allows the other party to annul the marriage. This includes insanity or madness of either spouse. Some scholars have described insanity as a condition where a person lacks the ability to discern benefit or harm, goodness, and evil. Another definition describes insanity as a disorder or disturbance in intellect and emotions, excluding epilepsy. The various types of insanity are listed below, and if present in either spouse, they can lead to the annulment of the marriage: (Ataei, 2018: 12).

- Temporary Insanity
- Long-term or Permanent Insanity
- Insanity Related to Minority (Youth)
- Insanity Not Associated with Minority

According to the aforementioned, Iranian civil law has been most influenced by Ja'fari jurisprudence and reflects the culture, customs, and intellectual foundations of society in its formulation. For a marriage to be valid, three conditions are required: the gender of the spouses, the age of marriage, and the consent of both parties, which are known as the positive conditions of marriage. Marriage also has negative conditions, known as impediments to marriage. Impediments to marriage are the conditions under which marriage is prohibited.

Examination of the Right to Annul a Marriage in Afghan Law

In Afghan law, there are also specific conditions for the annulment of marriage. Below are some of these conditions:

1: Absence of Essential Conditions for the Validity of the Marriage Contract:

The conditions for the validity of a marriage contract are those that, if not met, result in the legal effects and consequences of the marriage being null and void, provided that physical or sexual intercourse has not taken place. If physical or sexual intercourse has occurred after the marriage, it will be considered a defective marriage. In this context, Article 77 of the Civil Code specifies several fundamental conditions necessary for the validity and enforceability of a marriage contract, including:

- The proper execution of offer and acceptance by the marriage officiant or the guardian and their representatives.

- The presence of two qualified witnesses.
- The absence of any permanent or temporary prohibitions between the man and woman intending to marry.

These conditions are considered essential for the marriage to be legally valid.

2: Annulment of Marriage Due to Inadequate Dowry

Whenever a woman marries someone for less than the customary dowry and the guardian does not fully approve of the marriage, the marriage contract is considered non-essential, and the guardian has the right to object and request annulment. If a woman with full legal capacity marries without the guardian's (father's or paternal grandfather's) permission, the marriage must adhere to the customary dowry for it to be valid. If the customary dowry is not observed, according to a ruling in Hanafi jurisprudence, the marriage is invalid. (Sadeghi, 2019: 98). This right remains with the guardian (father) as long as the ward does not have a child or signs of pregnancy. This is explicitly stated in Clause 3 of the first paragraph of Article 133 of the Civil Code. According to this legal provision, if the dowry is less than the customary amount, it constitutes a defect in the marriage contract and allows for its annulment. In such cases, the guardian can request annulment from the court, and the judge may issue a ruling for annulment.

Some scholars and writers believe that failure to adhere to the legal minimum age for marriage at the time of contract formation may also be included under this provision. Article 70 of the Civil Code specifies the legal marriage age as 18 for men and 16 for women.

3: Annulment of Marriage Due to Insanity of a Spouse

Hanafi jurists are divided on whether insanity is a valid ground for annulling a marriage. Some consider insanity not to be a factor in annulment, while others view it as a valid reason, asserting that if a spouse (husband) becomes insane, the wife can seek annulment of the marriage. The Civil Code is silent on the annulment of marriage due to insanity or madness of one of the spouses; however, Clause 1 of Article 133 of the Civil Code considers the loss of sanity that occurred at the time of marriage as a ground for annulment.

From the broad interpretation of this legal provision, it can be inferred that the conditions for annulling a marriage due to insanity are the same for both the husband and wife.

According to Ja'fari jurisprudence, both the husband and wife have the right to annul the marriage due to insanity, depending on the case. Insanity is defined as a state of mental disturbance where the person is incapable of distinguishing between good and bad. Therefore, conditions such as fainting, unconsciousness, or epilepsy, which may cause unconsciousness, are not classified as insanity. Article 128 of the Personal Status Law stipulates that "the existence of the following defects before or after

marriage gives the wife the right to annul the marriage: 1) permanent insanity or 2) periodic insanity." As stated in this legal provision, if the spouse's insanity existed before the marriage or was present and concealed at the time of the marriage, the wife has the right to annul the marriage, provided that the conditions are met. Additionally, if insanity occurs after the marriage, the wife has the right to annul the marriage. However, if the wife becomes insane after the marriage, the husband does not have the right to annul the marriage. This is explicitly stated in Article 129 of the Personal Status Law: "The presence of the following defects in the wife before marriage gives the spouses the right to annul the marriage, provided that the husband was unaware of it before the marriage, such as insanity." The second clause of this article indicates that if these defects arise after the marriage, the husband does not have the right to annul the marriage. (Hayati, 2014: 25).

The reason for the difference in these rulings concerning marital relations is that if the wife develops a defect that provides grounds for annulment after the marriage, the husband can care for her or choose another life partner if desired. However, if the husband develops such defects after marriage, and the defect prevents him from fulfilling essential marital duties, the wife cannot continue a satisfactory marital life with him. Although the Civil Code does not specifically address annulment of marriage due to insanity, the second clause of Article 110 of the Personal Status Law explicitly covers this issue. Clause 2 of Article 110 of the Personal Status Law states:

"If the marriage contract is annulled for any reason before consummation, the wife is not entitled to the dowry unless the annulment is due to impotence or apostasy of the husband. In this case, the wife is entitled to half of the agreed dowry. However, if the husband or wife becomes insane after consummation and the marriage or valid sexual relations are annulled due to insanity, the wife will be entitled to the full dowry." (Article 98 of the Civil Code and Clause 1 of Article 110 of the Personal Status Law).

Conclusion

From the above discussion, we can draw the following conclusions:

1. Marriage is the primary means of managing human instincts, helping individuals avoid sexual misdeeds and preventing societal instability. It provides the necessary tranquility for family life, thus ensuring a stable environment.

2. Coexisting in marriage is not without its challenges, and it is possible that the continuation of the marriage may not be feasible for either party. Hence, both Sharia and legal systems provide solutions through divorce and annulment to address these issues.

3. The foundation of annulment of marriage is based on two principles: one derived from the blessed Hadith, which is the principle of avoiding harm and not causing harm, and the other rooted in the Islamic faith, which emphasizes the avoidance of hardship and difficulty in religion and divine law. Therefore, special

attention should be given to these principles in familial and social interactions to ensure that all parties benefit and are not harmed or placed in undue hardship.

4. The grounds for annulment of marriage are numerous, with most similarities between the jurisprudence and laws of Iran and Afghanistan, though there are some differences. This is due to both countries' legal systems being based on the sacred principles of Islam, rooted in the Holy Quran and the Sunnah of the Prophet Muhammad.

The areas of agreement regarding the annulment of marriage include cases such as Li'an, Ihram, annulment due to apostasy of either spouse, third divorce, 'Idda, insanity, and adultery with a married woman. However, differences include the discussion of the ninth divorce in Iranian jurisprudence and its absence in Afghan jurisprudence, as well as the prohibition of marriage with foreign nationals in Iranian law, which is not explicitly addressed in Afghan law.

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