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established in them, they can be considered as a common defect (insanity, leprosy, vitiligo) and a valid annulment due to the annulment criterion is ruled.

Nevertheless, it seems that it is necessary to look at this important necessity, namely the change in the subject and the possibility of terminating the marriage, more seriously so that the doctrine of law can resolve many problems by presenting new and emerging theories. It can also reduce the heavy burden of litigation cases and allow them to live with the existing realities.

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فلو مكنت من الا زاله و لم يحصل على الفور عاده “ process blocking vagina says “فالخيار بحاله” (Mohaghegh Karaki, 1976 p. 213)

Therefore, it seems that the amount of time to cure is usually the time needed to treat the disease, so that the other side does not have to wait long for this to happen, so it is necessary to refer to qualified physicians.

Conclusion:

The following results are obtained from what has been discussed so far:

- 1) Considering that the jurists of the Imamieh disagree on the number defects causing the annulment of marriage in women and men, some have summarized the titles of annulment five cases and some in three cases in men. Similarly, nine, seven and six cases causing the annulment of marriage in women are mentioned. Mohaghegh Helli identifies three and seven defects that lead to the annulment by the wife and husband respectively.

Like the Shahid Awwal, Shahid Thani considers the defects of the man and women five and seven defects, so it can be said that the earlier jurists disagree on the number of defects.

- 2) In the case of inclusion or exclusion of cases of defects leading to annulment right, many jurists such as Mohaghegh Karaki and Helli believe that the defects are specific to cases mentioned in narrations but a group of jurists has not considered the criterion of the defects specific to the cases in the narrative.
- 3) Due to scientific and technological advances, many of the annulment of marriage licenses are treatable, so if the defects are treated, the annulment of the license, which was the cause of the existence of a defect, may be revoked by the absence of the cause. According to the phrase (الحكم اذا تعلق بعلة زال بزوالها) with the deterioration of the cause of annulment i.e. the treatment, there is no longer the place for the survival of annulment.
- 4) Diseases that are nowadays affecting human beings affect marital relations and if the annulment license criterion is

sought to impose the standard arbitration criteria as arbitrage of custom. Therefore, he has chosen some of the defects, which he considers more important than others and limited the right to annulment to the same cases. If the progress of science makes these defects simple diseases, how is it possible to claim that the annulment of marriage is in accordance with the intent of the legislator and the principles of law?

Non-necessity of curing a defective person

It is mentioned in the jurisprudence books that it is not necessary to treat a woman with fleshy process blocking vagina but with the generalization of the topic of cure, it extends to all diseases, and the not necessity of curing is extended to all these defects and the other party has no right to force the defective person to treat his defect. The following reasons have been mentioned for the non-necessity of curing fleshy process blocking vagina and that the couple has no right to force her to treat:

- 1) The principle (Najafi, 1993 AH, p. 337): It seems that the principle is continuity and non-necessity of curing
- 2) Hardship (Tusi, 1984, p. 250 / Fazel Hind, p. 38): Treatment of the illness sometimes requires injury to the woman and therefore the necessity of treatment is neglected to prevent hardship.
- 3) The treatment of the wife is not the right of the husband so that he could force the wife to cure (Mohaghegh Karaki, 1976, p. 343) and the loss caused by the disease to the husband is eliminated by the annulment of the marriage (Najafi, 1993, p. 338). As can be seen by extending the discussion of treatment to other defects, this argument applies to the husband and therefore the treatment of the defective person is not obligatory.

It should be noted that treatment is the patient's right and the other does not share it and therefore s/he cannot prevent it (Al-Ahwal al-Shakhsiah al-Kuwait law, p. 42)

-Duration of treatment

A group of jurists consider one-year deadline for the treatment of impotency and Mohaghegh Karaki in treating fleshy

the lack of treatment by principle and the hardship is proven (Najafi, 1993, p. 327).

However, if the woman refuses and the treatment is possible, the annulment right is forfeited. In addition to the fact that the fleshy process blocking vagina does not have any specificity and there is no valid reason for this in particular let alone the jurists who have raised the issue of the cure of this disease in accordance with the specific narration and document.

Therefore, it is concluded that in other defects, the right to terminate can also be terminated by the treatment.

Seyed Ali Tabatabai points to the possibility of extending the right of annulment to diseases and other defects because the freedom of woman is only through annulment and then states: "It is certain that the only way of wife's freedom is not annulment option because sometimes this freedom emancipation is achieved by forcing the couple to divorce or separation until they find a cure and resolve the problem" (Tabatabai, 1972, p. 135).

B) Survival of the annulment right

Some jurists say that curing the disease does not eliminate the right to terminate and the annulment of the marriage is still permissible because since the doubt in survival of this continuity, treatment of the disease does not nullify the right of annulment.

This reason is criticized by the continuity of doubt; while based on the term "الحكم اذا تعلق بعلة زال بزوالها", with the abolition of annulment reason there is no longer any room for doubt. Moreover, the annulment right is to prevent the loss of parties and if the defects are removed by surgery or other means of treatment, the annulment right loses its legal basis. For example, if a woman is blind or crippled during marriage and she is cured before the man terminates the marriage, he cannot distort marriage. If due to advances in medical science these defects become treatable diseases, they will not be considered as defects and the husband has no right to terminate them. Although the annulment right in such a case is contrary to the law, it is arguably more compatible with the spirit of the law (the purpose of legislator) because the basis of the right in such cases is to prevent the loss of the husband except that the legislator has not

of impotency if the husband does not have intercourse with another wife or woman even once. In this case although the husband is not able to have intercourse with the spouse, he could have sex with another woman and according to the most famous, the wife will not have the option to terminate the marriage. This is claimed in Mabsut and Khalaf of Sheikh Tusi to be agreed. This lack of right to terminate is because there is hope for recovery". (Najafi, 1993, p. 326)

A number of jurists on the treatment of fleshy process blocking vagina say:

- 1- Shahid Thani: "If these defects occur after marriage, the husband has no annulment right... Also if it is possible to have sexual intercourse with a woman with fleshy or bony process blocking vagina but she could be treated by opening the area and cutting the processed bone or flesh, the husband's option will be voided unless the woman refuses to treat (Shahid Thani, p. 126).

In the above terms, it can be seen that the annulment right in the fleshy process-blocking vagina is a condition that the woman is unable or unwilling to cure if the patient is treatable.

- 2- Mohaghegh Karaki: If there is flesh in the wife's vulva but there is a possibility of marital relations, there will be no option for annulment even though the wife is incapable of sexual intercourse because of her small vulva. The husband is only capable of annulment that this process (which encompasses the whole environment of the vulva) is not removable of the wife refuses to remove it. Therefore, if the wife is satisfied with the treatment, according to the jurists in this case, the husband not have the right to terminate and that is because whenever the sentence is given to a cause, the sentence disappears as the cause is abolished (Mohaghegh Karaki, 1976 p. 224)
- 3- Sahib Jawaher: fleshy process blocking vagina is one of the defects that causes that give the annulment right to the husband and this is when there is no possibility of marital relationship and fleshy process blocking vagina is not treatable or its treatment is avoided by the wife and it is assumed that

medical science) and treated, the right to terminate is abolished (Katouzian, 1992, p. 205).

Here are some of the words of jurisprudents to support the theory of the waiver of the annulment right with the treatment of illness:

- 1- Ibn Joneyd Eskafi "The one-year deadline to the man is since the couples go to the court; therefore, if the man improved and mated with his wife, there would be no right to terminate, otherwise the wife has the right to terminate the marriage. " (Ibid., P. 218)

Thus, in impotency, the annulment right is abolished by the treatment of the husband within one year and to waive the annulment right with treatment, no other disease is discussed.

- 2- Allameh Helli: If a man develops impotency after marriage, he is given a one-year deadline. If after one year he cures his disease, it is desirable, otherwise, the wife will have the right to terminate the marriage contract (Allameh Helli, 1994, p. 194).
- 3- Fazel Hendi: Impotency by the consensus of the jurisprudents and documents gives the wife control over the annulment, which is achieved when the impotency occurs in their intercourse. It is claimed that there is no disagreement between the jurists on this subject in Mabsut and Khalaf and this is because there is a hope that the impotency would be resolved in man (Fazel Hendi p. 381)

Therefore, in impotency, the annulment is subject to lack of marital relations with the wife and if the intercourse occurs even once, or if sexual intercourse with another spouse is possible, the annulment is ruled out because of the traditions in the subject and because there is hope in the patient's recovery.

- 4- Mohaghegh Bohrani: The appearance of the news is that the person is given a one-year deadline and the reason is that impotency is assured after one year or perhaps because impotency could be treated in this period and the legislator has set the time for his treatment" (Bohrani, 1989, p. 265).
- 5- Sahib Jawaher: In any case, there is no difficulty in establishing the right of annulment for the spouse in the event

returned to her family." A similar story is also quoted from Abi al-Sabah.

Therefore, whenever the issue of retraction from intercourse is excluded, the right of annulment also disappears.

2- Another set of traditions about impotency by expressing the one-year deadline postpone the issue of annulment even during the sexual intercourse period and mention in Abi al-Sabah's narration: « حَتَّى يَعالِجَ نَفْسَهُ » Until he treats himself.

سألت ابا عبد الله عن امرأه ابتلى زوجها فلا يقدر على جماع انفارقه ؟ 3-
قال : نعم ، ان شاءت ، قال ابن مسكان : و في روايه اخرى « ينتظر سنه فان اتاها و
(Ibid, p610) الافارقتها فان احبت ان تقيم معه فلنقم »

Aba Basir Moradi says: Imam Sadiq (AS) was asked about a woman whose husband was ill and had no sexual intercourse and if she had the right to separate from her husband? The Prophet said, "She can, if he wishes."

4- Ibn Meskan narrates another narration, which states: "A woman waits a year, if her husband finds the ability to have intercourse with that woman, they will continue living, and otherwise the woman will be separated, unless she so wishes to continue with her husband (Al-Hurr al-Amili, 2004, p. 611)

5- Abi al-Sabah quotes Abi Abdullah (AS): « اذا تزوج الرجل المرأة و هو لا يقدر على النساء اجل سنه حتى يعالج نفسه » (Ibid., P. 611) whenever a man who has no marital potency marries a woman, he will be given a one-year period to cure himself.

6- It is written in Al-Mughana: **روى انه ينتظر به سنه فان اتاها و الافارقه ان**
احبت (Ibid., P. 611).

The impotent man is given a one-year grace period, if he has sexual intercourse with her husband, life goes on, and if she does not marry, the marriage will be terminated if the woman wishes so. Some jurists mention the reason of this one-year deadline as the possibility of treating the disease (Ibn Fahad, 1980, p. 360). On the other hand, this disease is not unique among other disease except that it was possible to cure it at that time, because, according to doctors, the cause of the disease is mental or physical and in the mental kind, it is treated with climate change or by the elimination of some concerns. Therefore, if the disease is treatable (with the advancement of

1- Waiver of the annulment right

2- Survival of the annulment right

A) Waiver of the annulment right

The words of Sahib Jawaher (Najafi, 1993, p. 335), Ibn Fahd Helli (Ibn Fahd, 1980, p. 360), Fazel Hendi (Fazel Hendi, p. 380), Sheikh Tusi (Sheikh Tusi, 1984, p. 156), Shahid Awwal, Shahid Thani (Shahid Thani p. 384) and another group are based on this theory. Although this theory is inferred from some of the group's comments on certain diseases, proponents of this theory cite the following reasons for waiving the annulment right:

1.1. Waiver of the rule due to the deterioration of cause:

This sentence, which is referred to in numerous cases of jurisprudence (Sheikh al-Tusi, 1984, p. 115), indicates that whenever a judgment is mentioned with its cause, the sentence is waived with its reason. Thus, with the expiration of the cause of annulment, i.e. with the treatment of the illness and the possibility of marital life, naturally the right of annulment disappears. However, several reasons for the termination of marriage is discussed by the jurists (Ibid p. 115) including:

Waiver of the purpose of marriage and non-interference, loss, hatred, deprivation

With the treatment of these causes and deterioration of the disease, the decree no longer permits annulment of marriage.

1.2. Waiver of the annulment right in terms of narrations

Many traditions do not mention the cause of the disease or the cause of annulment of marriage. Some traditions have referred to the cause of annulment of marriage as the husband retraction, as examples:

- 1- Hassan bin Saleh: قالت : سألت ابا عبد الله (ع) « عن رجل تزوج امرأه فوجد (Al-Hurr al-Amili, 2004 p. 593) Imam Sadiq (pbuh) was asked about a man who married a woman with bony process blocking vagina. He said: Such a woman does not become pregnant and her husband has difficulty in sexual intercourse with her, she is

justifications, social considerations and reasoning based on interest, analogy and approbation. Therefore, they seek narrative to enforce the right to terminate a marriage for a man or woman and they are determined to the literal implication of the narrations instead of paying attention to their cause and application. This type of in understanding and expressing Islamic social law in some cases has not yielded the desired results because time, realities of society and common sense cannot accept the regulations resulting from this type of insight and these kinds of laws and regulations will be abandoned.

Treatment of defects and annulment right of marriage

Another important issue that seems to be needed in this study is the issue of treatment of defects and their effect on annulment right of marriage.

On the question of whether defects of a man or a woman are eliminated by surgery or other means, the right to terminate will be abolished, some jurists who believe that the right to terminate is to prevent man's harm. If surgery or other treatment devices eliminate these defects, the right to terminate loses its legal basis and the provisions of the Family Protection Act and the Special Civil Court Bill reinforce thus interpretation. The legislator's desire is to protect the family and its strength and to avoid unnecessary divorce as much as possible (Katouzian, 1992, p. 282).

Seyed Hassan Emami has no uniform approach and denies the annulment by resolving the bony process blocking vagina but maintains the annulment despite the surgery of "recto vaginal sistula" (Emami, 1991, p. 467).

One can see from the jurists' words that either they did not raise this issue or if they did, it was about the cure for impotency and fleshy process blocking vagina. Of course, this may be due to the incurability of some diseases in the past. Therefore, regarding impotency and fleshy process blocking vagina that could be cured, some have raised this discussion. Since most diseases today are fully treated, it is necessary to summarize the opinions and reasons for this in the words of jurists:

If the disease is cured, there are two theories on the constancy or expiration of the right of annulment

becomes evident that there are significant differences between men and women in their right of annulment of marriage. Imam Khomeini in response to a question about the right to terminate marriage in the face of detrimental and disgusting defects has answered: Like men, she can terminate marriage and does not require referral to the court to prove hardship and go through difficult ways. However, there are expressions that have much to contemplate under his response. Imam says: "The precautionary way is to force the couple to divorce with the highest advice if it is not possible, divorce will be allowed by the religious ruler. "If he had the courage, it would have been easier."

What does this sentence mean? It may mean that, according to a jurist such as Imam Khomeini, if there is a problem in the marital life for a woman, apart from resorting to hardship and forcing the husband to divorce, and if it is not possible, the court may decide on an easier way in the law and jurisprudence that solve the problem sooner and more justly. What is the easiest way for the Imam to do this? At least it is not clear, perhaps to the students of the Imam who are aware of his jurisprudential school, it means a woman when facing harmful and hateful defects could terminate the marriage contract like men and she does not to refer to the court, prove hardship and go through difficult ways of litigation. Based on this support and the comment of a valid jurist such as Imam Khomeini one could say: the civil law in the field of marriage cancellation needs to be reformed. on the other hand, most of these opinions have jurisprudential and Islamic bases and when they are considered as Islamic doctrine, the Islamic vision is naturally challenged. Therefore, it is necessary to examine these rules, their principles, philosophy and wisdom or, contrary to what is evident, find and correct the Islamic view and change them by discovering that perspective with respect to the demands of time and place, using dynamic ijtihad. Moreover using rational and convincing justification it would be possible to remove suspicion of discriminatory and unjust rulings from Islam.

On the other hand, due to the principle of necessity of marriage contract and special status of marriage, which distinguishes it from other contracts, the famous jurists consider it permissible to terminate and disrupt the marriage by having a narrated version of the law prescribing it. They do not consider a place for rational

that defects created after marriage do not give rise to annulment of marriage. The third group believe in distinction i.e. some pre-marital defects have been accepted to terminate the marriage (Critical Scholar, 1989, p. 369) and post-marital defects do not cause annulment. However, the question is whether the diseases not mentioned in the narratives such as: lack of congenital uterus, lack of ovaries, premature ovarian failure and partial growth of the endocrine glands causing lack of fertilization, ovulatory obstruction, inability to conceive, lack of ovulatory, inadequate ovulatory growth, impaired marital relationships and infertility due to hematocolpos, impaired reproductive structure such as severe hypospadias or epispadias, urinary tract failure, HIV disease, thalassemia as a hereditary disease that destroys red blood cells in later generations and causes anemia, laming, severe skin odor and transpiration, severe snoring , or many serious illnesses such as cancer that cause difficulty in continuing marital life are among the cases for annulment of marriage and do not follow the path to arraignment and long divorce proceedings? Here are two theories:

The theory of non-authorization of generalizations of defects from the described cases

- Inclusion of men's defects: A group of jurists believes that the defects of men are unique to the same defects mentioned in the narrations (Mohaghegh Karaki, 1976, p. 242 / Najafi, 1993, p. 330)

B) The theory of exclusion defects and generalizations of the described cases

A group of jurists, including Ghazi Ibn Boraj, believes in the theory of exclusion defects. For example al-Mahzab says : "Insanity, leprosy, vitiligo and blindness are considered common defects of men and women" (Mohaghegh Karaki, 1976, p. 242 / Najafi, 1993, p. 330)

Defects of annulment of marriage and observance of women's rights

One of the most important problems of today's societies is the issue of protecting women's rights and observing justice for women and men, but a close look at the issue of annulment of marriage it

Seyed Ali Tabataba'i rejects this in Riyadh al-Masa'al. He believes that narration does not refer to the public, but narrative just raises the defects in women because Afl is specific to women.

- 2) Contagiousness of the diseases: Since leprosy is contagious, it causes harm to the woman so the woman gets the right to terminate her marriage.
- 3) These diseases in the woman cause the right to terminate for the husband. However, a man can divorce his wife but if such a defect is in man, a woman who does not have the right to divorce should be able to terminate the marriage by using the right of annulment (Tabatabai, 1876, p. 132). This reason is not accepted because if the wife refuses the right to terminate the marriage, in such cases the ruler can force the husband to divorce or the wife can withdraw from the marriage until the husband is cured.
- 4) The presence of these defects (leprosy, vitiligo...) in a man with the intent to marry with sexual orientation is in contrast, so the woman should have the right to terminate the marriage.

C) Inclusion or exclusion of defects in women

Sahib Jawaher believes that the woman's defects are limited to seven cases and they do not exceed it. He also provides reasons for them. Moreover, the specific causes are not credible in proving the annulment right relative to wife's other defects (other than the seven cases) because in addition to the weakness of some of the narrations, most jurists have rejected it; in addition, some narrations are not explicit in terms of the favorable implication (Najafi, 1993, p. 330)

- Generalization of defects from the cases mentioned and some examples

In general, there are three different theories regarding the defects after the marriage contract. The first group has accepted the annulment of the contract due to defects and states that the defects both before and after marriage can terminate the contract (Sheikh Tusi, 1991, p. 210). But the second group believe in non-cancellation and jurists such as Shahid Sani, Allameh Helli and Ibn Idris believe

Damad, 1989, p. 353 / Mehrpour, Mofid Quarterly, No. 20). However, another group of scholars consider marriage matters to be divine and allow less rational analysis especially as they consider the most important basis for marriage annulment as the specific traditions such as Shafeh Halabi and refer to the rule of no harm in this regard. They argue that the reason of the rule is not clear to us and the narrations themselves have not said anything in this regard, there is no room for such considerations and two theories are discussed in this regard with their own reasons.

A) Inclusion of men's defects

A group of jurists believes that the defects of men are the defects mentioned in the narrations that their reasons are discussed here:

- 1) The principle
- 2) The narration of Dhabi analogy in which the Prophet (peace be upon him) said “الرجل لا يرد من عيب”. This narration is enough as long as no other reason does not raise another defect (Mohaghegh Karaki, 1976, p. 242)

Shahid Sani criticizes this reason, saying: "analogy is not known in the books of the jurists; therefore, the narration of his hadith is unreliable. In addition, to perform based on narrative, no defect in man should not lead to the right of annulment for a woman, which is contrary to the consensus of the Muslims (Shahid Thani, p. 110).

3) Honoring the analogy

B) Lack of inclusion of men's defects

Some jurists believe that besides the defects in the narration of al-Ḍabbī analogy if a man suffers from leprosy, vitiligo or blindness, the wife has the right to terminate her marriage. Ghazi Ibn Boraj (Ghazi Ibn Boraj, p. 234) considers leprosy, vitiligo and blindness as common male and female defects. Ibn Joneyd Eskafi (Safaei, 1996, p. 298 onwards) has also accounted these four defects, plus laming and adultery as common defects.

- The reasons for this group are as follows:

- 1) Halabi narration: Marriage will be terminated by vitiligo, leprosy, insanity and Flethy process blocking vagina (Afl). This is a common narrative, so both men and women are included.

there is a right to terminate the marriage (The Great References, Explanation of References, 1996, p. 393). However, Ayatollah Araki, Fazel, Behjat and Makarem added another point including the bone, flesh or tumor that block vagina. However, the number of men's defects was agreeas four including insanity, lack of penis, impotence and castration (Mohaghegh Damad, 1999, p. 354).

Inclusion or exclusion of defects for marriage annulment

The following cases are discussed on the subject of inclusion or exclusion of the defects of the annulment of marriage license - in men and women. The famous jurists have suspended the license for annulment to the text and document indicating the prescription of the legislator and do not consider a place for rational justifications, social considerations and reasoning based on interest, analogy and approbation; therefore, they seek to find narrative text to consider the right to terminate a marriage for either man or woman (Mehrpour, Mofid Quarterly, No. 20, p. 50). Accordingly most of the Imamiyah jurists such as Sheikh Tusi, Sheikh Yusuf Bohrani, Mohagheq Karaki, Sahib Jawaher and Khoei follow the traditions of the Ahl-ol-Bayt (AS) regarding the annulment of marriage. However, other Imamiyah jurists have stated an opinion other than the famoust jurists. Fir example Ibn Joneyd Eskafi, Ghazi Ibn Boraj, Allameh heli, Shahid Thani and Seyed Abolhassan Isfahani, who do not confine common male-female defect in insanity. They also consider vitiligo, leprosy, lameness and adultery as common defects between men and women.

The limited number of cases of annulment of marriage has been firmly accepted by most Shia and Sunni jurists (Safa'i, 1375, p. 298 onwards). In addition to the abovementioned hierarchy, misrepresentation and breach of description in Imamiyah jurisprudence are included in marriage and referred to and the interpreters under Article 1128 have such interpretation (Emami Seyed Hassan, 1991, p. 470 / Shaygan, 1974, No 344 and 743 / Katouzian, 1992, No 167).

However, at the same time, as stated, many jurists have referred to the harm and contagiousness of some diseases, and based on analogy, the priority is given to the commonness of vitiligo and leprosy between men and women(Shahid Thani, p. 110 / Mohaghegh

Like Shahid Awwal, Shahid Thani considers man's defects as insanity, castration, genital organs cut, impotency and leprosy (according to a narration) and sees nine woman's defects that cause a marriage to be terminated:

Insanity, leprosy, vitiligo, blindness, being crippled, bony process blocking vagina, recto vaginal sistula, fleshy process in rectum and swelling of the rectum (the latter two defects are disagreed) (Shahid Thani, p. 125).

It can be said that earlier jurists disagreed on the number of defects and the details and implications.

Mohaghegh Helli's theory

The late Mohaghegh divides defects into two categories: "For men, for women". Man's defects that cause the right to terminate by the wife are three: insanity, castration and impotency and in case of "genital organs cut" he says "ولو حدث الجب لم يفسخ به وفيه قول آخر ..." (Mohaghegh Helli, 1999, p. 541). Genital organs cut is not among the defects which give rise to the right of annulment. He sees seven woman's defects that cause a marriage to be terminated: Insanity, leprosy, vitiligo, bony process blocking vagina, recto vaginal sistula, being lame and blindness (Ibid., P. 538).

- Imam Khomeini's theory on the defects of marriage annulment

There is also little disagreement in the expression of the jurisprudents in the sense that Imam Khomeini (SAW) has stated the division as common and specific defects.

Common defects: Common defects include insanity and specific defects are themselves divided into two categories:

A) Men-specific defects, including: castration, fearfulness and impotency

B) Women-specific defects, which are six: Vitiligo, leprosy, recto vaginal sistula, bony process blocking vagina (Gharan or Afal), obvious paralysis and blindness (Khomeini, 1999, p. 532)

Theory of other contemporary jurists

Ayatollah Golpayegani, Khoei, Tabrizi and Sanei denote the number of female defects as six cases of insanity, leprosy, vitiligo, blindness, being lame (obviously) and recto vaginal sistula that

abolished and remains in place and how this is consistent with Shari'a protections for the maintenance of family center that seeks to avoid vain divorces as much as possible?

In this article, it is attempted to find answers to the questions raised by examining and analyzing the opinions of jurists.

Defects as the causes of permanent marriage annulment: According to jurists, there are three factors leading to the annulment of marriage in a permanent marriage:

1- Defect 2- Breaking the trait condition 3-Misrepresentation

And two other things that lead to dissolution in temporary marriage are:

1- Expiration 2- Dispensing with remaining term

Defects of annulment of marriage in jurisprudence and its divisions

The opinions of earlier and later jurists on the defects of annulment of marriage can be very similar, but they differ on the type of classification and sometimes in some examples some of which are brought here:

Shahid Awwal's theory:

Shahid Awwal considers man's defects as insanity, castration, genital organs cut, impotency and leprosy (according to a narration) (Shahid Awwal, 1990 p. 193) and he does not agree in terms of the number of female defects with Mohaghegh Helli (عيوب المراه تسعه الجنون و (الجذام و البرص و العمى و الاقعداء و القرن و الافضاء و الرثق على خلاف فيهما) (Mohaghegh Helli, 1999, p. 541). That is woman's defects that cause a marriage to terminated are nine:

Insanity, leprosy, vitiligo, blindness, being crippled, bony process blocking vagina, fleshy process blocking vagina type I (Afal) fleshy process blocking vagina type II (Rataq), recto vaginal sistula; however there is a disagreement about Afal and Rataq

In the latter two cases, however, he argues that there is disagreement among jurists.

Shahid Thani's theory:

consider a place for rational justifications, social considerations and reasoning based on interest, analogy and approbation. Therefore, they seek narrative to enforce the right to terminate a marriage for a man or woman and they are determined to the literal implication of the narrations instead of paying attention to their cause and application. This type of in understanding and expressing Islamic social law in some cases has not yielded the desired results because time, realities of society and common sense cannot accept the regulations resulting from this type of insight and these kinds of laws and regulations will be abandoned. It seems that a detailed examination of the defects resulting in marriage license annulment should be made to determine whether such a number of specific diseases and this form of classification could be acceptable for any age or it should be discovered and generalized to other matters or ruled out in the light of scientific progress and the right to terminate annulment. In other words, it could be a perfect law and can be used at any time because many diseases and defects have been incurable in the past while they can be cured at this time. Therefore, by curing and removing these diseases, these defects are removed from the subject matter and on the other hand, emerging diseases have been added that may be more deadly than the defects of the annulment of the marriage license; so it is necessary to generalize it to the examples of updated defects with discovery of its criteria.

Therefore, the questions that are raised here are:

- 1) Why fatal diseases that are more dangerous in every respect than the defects resulting in the annulment of a marriage license are not recognized as the defects resulting in the annulment of a marriage license and are not presented in the laws and jurisprudence?
- 2) Why defects such as leprosy, vitiligo and blindness are exclusively for women and if the defects exist in the wife, the husband has the right to terminate, while in case of the husband's infection with such diseases, the wife has no right to divorce and is not entitled to terminate her marriage in these cases?
- 3) And why, if the defects of a man or a woman are eliminated by surgery or other means, the right to terminate will not be

Introduction:-

The advocates of equality between men and women attempt to establish and legalize the fact that both men and women have the same status in making a marriage contract and the intent and satisfaction of each of the two is the condition of marriage. In the case of dissolution of marriage, that is, in the case of dissolution of marriage, whether by annulment or divorce, they have the same power and status and the legal restrictions, if any, apply equally to both of them. Article 23, paragraph 4 International Covenant on Civil and Political Rights (ICCPR) states that "States Parties to the present Covenant take appropriate measures to ensure the equality of rights and responsibilities of couples with respect to marriage duration and its annulment". Article 16, paragraph 1, of the Universal Declaration of Human Rights also provides: "... at all marriages and at the time of its dissolution, the husband and wife have equal rights in all matters relating to marriage".

However, the Islamic Republic of Iran Civil Code - originating from Islamic jurisprudence - states the possibility of annulment of marriage under Articles 121 to 123, which leads to annulment of marriage for couples, some of which are for men and some are related to woman. Only one defect is common to men and women, and if the defect is present in each man and woman, the marriage will be terminated. Identifying these defects and conducting a comprehensive investigation of these defects necessitate a new thinking and attitude to the defects causing the annulment of marriage in the light of *ijtihad* and the expansion of dynamic jurisprudence because some of these defects are curable and other emerging diseases that are far more dangerous than those defects are not discussed in Islamic civil law and jurisprudence.

By referring to the famous jurisprudence books, it is often recognized that jurists consider a number of special diseases with special classification to cause the right of annulment for the parties to the marriage contract and that their differences are limited. Accordingly, that some common defects as one and other jurists have mentioned other diseases as causes of annulment. The famous jurists have suspended the license for annulment to the text and document indicating the prescription of the legislator and do not

Abstract:-

Clearly, defect is one of the causes of the annulment of permanent marriage, but it is known by reference to the famous jurisprudence books that jurists often regard certain diseases with special classification as the causes of marriage annulment for the parties and their dispute is limited. In a way that some common defects are not more than one defect and some jurists have cited other diseases as causes of annulment. The famous jurists have suspended the license for annulment to the text and document indicating the prescription of the legislator and do not consider a place for rational justifications, social considerations and reasoning based on interest, analogy and approbation.

It seems that a detailed examination of the issues of annulment license should determine whether such a number of specific diseases and this form of classification could be acceptable for any age or whether its criterion should be discovered and generalized to other matters. That is because many diseases and defects have been incurable in the past while they can be cured at this time, thus curing and removing these diseases is ruled out. On the other hand, new diseases have emerged that may be more lethal than the defects designated to annulment license. Therefore, it is necessary to proceed with the discovery of the criterion in order to generalize it to the cases and deficiencies of the subject matter.

Keywords: Marriage annulment defects, Incurable defects, Defects' inclusion, Updated defects.

المخلص:

كما نرى أن المرض هو أحد أسباب فسخ النكاح وبعد دراسة الكتب الفقهية وجدنا أن الفقهاء غالباً ما يعزون عدداً من الأمراض المحددة إلى فئة معينة تؤدي إلى الإنهاء لأطراف عقد الزواج وهناك آراء مختلفة ومتضاربة لهم في أنواع الأمراض ومصاديقها التي بموجبها يفسخ النكاح. لكن يري جمهور الفقهاء أن فسخ النكاح يخضع لوجود نص و سند قولي من قبل الشارع ومؤكداً أنه لا يرتبط بالتبريرات العقلية والاعتبارات الاجتماعية والحجج القائمة على النفعية والقياس. لكن نرى أنه من الواجب معالجة موضوع العيوب المؤدية إلى فسخ النكاح لكي نحدد هل يمكننا قبول هذا التصنيف للأمراض في الكتب الفقهية لكل العصور؟ أو بوسعنا أن نتفي هذا الحكم اعتباراً للتطورات العلمية الحديثة حيث كثير من هذه الأمراض يعالج فتتفي هذه الأحكام بانتفاء الشروط والظروف القديمة. ومن جانب آخر نواجه أمراضاً مستحدثة أهلك من تلك العيوب والأمراض المنصوصة عليها لجواز فسخ النكاح.

الكلمات المفتاحية: العيوب الموجبة لفسخ النكاح، العيوب المعالج، حصر العيوب، العيوب المستحدثة.

Defects of Annulment Permission, Inclusion or Exclusion

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ماهية العيوب التي يفسخ بها النكاح وهل هي محصورة أم لا؟

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