

# Stone for Fools in Islamic Jurisprudence: A comparative study of the Iraqi Civil Law No. (40) for the year 1951

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## Abstract

Islam and civil law both place a high value on quarantining idiots because it concentrates on two fundamental concepts. In the first place, confined people constitute a significant portion of the population, and their protection should not be overlooked. In Islamic law, money is a precious commodity that must be safeguarded against theft or misappropriation. For this brief study we will explain the concepts of stone and foolishness and how they are used in jurisprudence and Iraqi Civil Law No. (40) for 1951, as symptoms of eligibility may influence adulthood (foolishness) to address some of the provisions of law that pertain to fools in order to protect incompetents from their own self-inflicted harm. It is possible for a fool to participate in any of the selling or purchasing actions, exposing himself to injustice, and he will not be able to get the same results as the right person accomplishes.

**Keywords:** Fiqh - Islamic jurisprudence - stone - foolishness - financial behavior.

## I. Introduction

Praise be to God, Lord of the worlds, and prayers and peace be upon the best of messengers, Muhammad and his family and those who follow him until the Day of Judgment...

The Islamic Sharia came comprehensive and general, and its goal is to remove people from the motives of desires, to the circle of truth.

The search for foolishness and the subject of being stoned is one of the topics that Islamic law has been concerned with of great importance, by clarifying all the rulings related to his behavior.

### Research problem

- The research deals with a topic that touches a good segment of society, which is the category of those interdicted for foolishness.
- Islamic law, particularly the Imam's, serves as the framework for the study's comparison.

Problems with the Iraqi legislator's jurisprudential choices in quarantining idiots include identifying Islamic jurisprudence's inadequacies, strengths, and required provisions relating to fools, their rights, and making

recommendations for correcting such deficiencies.

### Reasons for choosing the topic

In addition to the subjective motives represented mainly by the love of scientific research, the choice of this topic has many objective motives, the most important of which are: the absence of many academic studies dealing with the subject comprehensively.

And the relationship of the research with the provisions of Islamic jurisprudence.

### Research aims:

- Analyzing some texts of the Iraqi civil law related to the stonewalling of fools, and comparing them with Islamic jurisprudence.
- Attempting to present a scientific addition to the studies previously presented in the field of stonewalling of fools to be an additional building block in the edifice of comparative legal studies in Islamic jurisprudence.

### Research Methodology:

Islamic jurisprudence's five schools of thought were outlined and studied, and their legal

decisions were contrasted to those derived from the jurisprudential literature pertaining to "the stone of the ignorant."

### Research Plan:

Accordingly, we organized our research into two sections: the first is devoted to the notion of stone and terms connected to our topic, and the second deals with the Islamic jurisprudence about stone for idiots, followed by a conclusion and references.

### The first topic

#### stone concept And the words related to the title of the search

In this topic, we will learn about the concepts of stone and foolishness, and what is related to them. The definition of the concepts mentioned in the title of the research, by dividing it into two demands:

**First:** linguistic definitions.

**second:** the idiomatic definitions, which are as follows.

#### The first requirement/language definitions

##### First, the stone language:

The stone in the language is what you forbid, that is, you prevented it from reaching it, so stone is triangular with the dammam, kasr, and al-fath which means several things.

- 1- Al-Haram, and Al-Hijra: The narrow and the forbidden stone was called the narrowness of the prohibition.
- 2- The Ismail stone: it is called the section outside the wall of the Kaaba, and it is in the form of a semi-circle.
- 3- It is forbidden to act, which is: to place a stone on a person with his money and prevent him from spoiling it and it is a title for explaining the rights of the interdicted in the jurisprudence books, because the stone in the language is used to denote prohibition and prohibition.

##### Second: Foolishness is a language

The foolish means the devoid of dream or the ignorant, and Al-Fayumi explained the foolishness as: a deficiency in the mind, and for the willing it is: lightness in the body and soul

due to the deficiency of the mind, and he mentions that: the root of foolishness is imbalance, and it is most used in relation to the mind and dream. As for the concepts of lightness, mediocrity, absurdity, tricks, deception, deficiency, ignorance, disorder, and extravagance, among its effects and requirements in resources, there are linguists who see foolishness as insulting, but the difference between them is that insult is good and that is if the insulted deserves to be insulted, and foolishness is only ugly.

And the Noble Qur'an dealt with fools and foolishness within ten verses, including: the Almighty's saying: "And whoever despises the religion of Abraham except he who fools himself", they said in its interpretation: And in al-Kashshaf he said in its interpretation: "The origin of foolishness: lightness... and that if he desires something that a sane person never desires, he has exaggerated in humiliating himself, so the Qur'anic verses mention fools and what is meant by him in all resources is lightness in the mind, ignorance, weakness, lack of measure or lack of knowledge In terms of benefit and harm.

Among the above, there is no difference in the linguistic and Quranic meaning in that.

##### Third: Rushd Language:

Al-Rushd was defined as: righteousness, which is the opposite of error and misguidance (), Al-Razi said: The ra, the shin and the dal are one origin that indicates the straightness of the path. Righteousness and righteousness, God Almighty said: (If you find among them being rational, then pay them their money) () and righteousness and righteousness in religion (), for guidance in the language is used to denote integrity and intellectual significance.

#### The second requirement / Idiomatic definition

**First:** the stone idiomatically

It means the legal prohibition of disposing of funds. Here are some of the most important definitions:

- 1- The Imamis said: The one who is interdicted is the one who is forbidden according to the Shari'ah from disposing of his money, even some of it.

2- The Hanafis said it: "It is an expression of a specific prohibition related to a person, of a specific behavior, or the enforcement of that behavior".

3- The Malikis said that the stone is a legal attribute governed by Sharia, which necessitates preventing its description from the influence of his disposal of what exceeds his strength, and also it must be prevented from the influence of his disposal in his donation in excess of one-third of his money...".

4- The Shafi'is defined it as: "Prohibiting the disposal of money for specific reasons...()", and thus avoiding the comprehensiveness of the prohibition for all actions and limiting its reasons to special cases, and this means restricting the prohibition to verbal rather than actual actions .

5- The Hanbalis said about it: "Malik's prohibition from disposing of his money, whether this prohibition was from the legislator... or by the ruler.

And the stone in the law

All man-made laws dealt with the stone because of its importance. The Roman law used to quarantine a person if he reached puberty, but he did not manage his money well, and sow it... The purpose of stone in Roman law is to protect the family's money and that the reason for the stone has evolved and includes all the money of fools as an inheritance Was it or not, and he set up a trustee to act on his behalf in behaviors harmful to his interest, after a decision was issued to stone him in a way that he does not have full capacity except by another decision that includes the removal of the stone and accordingly most modern laws have derived their provisions related to the subject of stone from Roman law.

As for the French legislator, it did not take the foolishness to be stoned, as is the case in Roman law. Rather, it adopted another principle that includes making a judicial custodian of the foolish in order to assist and supervise him in some specific actions, and this is what is called the judicial assistant.

As for the Iraqi civil law, it did not consider the foolish to be interdicted for himself, but rather he was required to be placed under a ban, and the reason for the stone was to preserve the money of fools, as is the case in Roman law.

Accordingly, the stone in the idiomatic as it is in the language means the prohibition of disposing of the money as well.

Secondly, idiomatically

The opinions of the jurists differed regarding the definition of foolishness.

### 1- The Imamiyyah

Most of them said about the fools: "He is the one who spends his money in a way that is not appropriate for the actions of the wise", and among the justifications of foolishness is spending on taboo, and in a way that does not suit his condition.. , and also: he who has no condition that motivates him to save his money and take care of his condition, he spends it in a wrong place, and destroys it in a different place, and his transactions are not based on bribery and reservations about fraud, he does not care about being deceived about it, the people of knowledge and sane people know him by their conscience if his presence is out of their mode And their behavior in relation to his money, collection and disbursement".

2- **Al-Zahiriyah:** Explain the foolish: based on the apparent meanings of the Qur'anic verses on three meanings:

a) Indecency and verbal abuse: They do not disagree that one of these characteristics is not forbidden in his money.

b) Unbelief: In the Almighty's saying, quoting from Moses (peace be upon him): "Will you destroy us by what the fools among us have done?" And there is no dispute that the infidels do not withhold their money.

c) Lack of reason to address such as insane and young boys only: People of this quality do not give their money.. Whoever says: that whoever is unfair in selling and does not improve his preservation of his money, even if he is sane, addressed to religion and distinguished for him within the name of foolishness mentioned in the two verses, then he said falsehood and said On God Almighty: What he has no knowledge of, and what he has no proof of its correctness, and all of this is forbidden and it is not permissible to say it . God Almighty said: You will not attain righteousness until you give of what you love , and in the Sunnah: The saying of the Messenger of God (peace and blessings of God be upon him and his family):

For them, the fools are the unbeliever and the mindless, and they cited the verses which elucidate that the one who has reached a distinction of faith from unbelief has deceived him from the rationality that there is no rationality other than him at all, so his money must be paid to him.

What is observed in the interpretation of the foolish here, causes astonishment and astonishment, because a skilled scholar like Ibn Hazm and his words are usually accurate and balanced, how he:

- In Surat Al-Baqarah, the fools are interpreted as infidels.

- If foolishness means a mindless person, what is the difference between foolishness and madness?

### 3- Alhanafia:

They said about the fool: He is the one who does not manage his money well, so he spends it on what is not permissible... and other spending in other than what is required by reason and Sharia. Likewise, if he spends his money in a good deed... then he is considered foolish and he is prohibited from doing it, because God Almighty only mandated A person does good deeds if his financial condition permits that, so that he does not spend his money and goes bankrupt in order to do good (), extravagance is forbidden, like extravagance in food and drink, because of the Almighty's saying:

Abu Hanifa said about the foolish: A sane adult is not prohibited because of foolishness.. He is not prohibited from a fool, and his disposal of his money remains permissible, even if he is a wasteful, corrupting waste of his money for what he has no purpose or interest in, because in stripping his guardianship over his money is a waste of his human being and his attachment to beasts and he is More harmful than squandering, the higher damage is not incurred to pay the lower.

### 4- Al-Malikiyah

They said: Foolishness is waste and lack of good disposal of money, and Al-Zuhaili said: Foolish is the wasteful of his money, either because he spends it by following his lust or because he is not aware of his interest, even if he is righteous in his religion.

### 5- Shafi'is

They said: A fool is a wasteful person who spends it on something that does not bring him immediate or future benefit... But if he is leniency in selling and buying it while he is knowledgeable, this is not considered foolish, because it comes under the heading of charity. Likewise, if he spends his money on goodness and goodness in his presence, then it is not foolish. Rather, if he spends his money on permissible pleasures, even if he expands on that in a way that does not suit his condition, then he is not considered foolish.

### 6- The Hanbalis:

They said: A fool is the one who does not dispose of his money well.

From the foregoing, the research finds:

- The Malikis and the Hanafis expanded on the concept of foolishness, unlike the Shafi'is and to a lesser extent the Hanbalis, and this may be due to the fact that the Shafi'is did not consider extravagance in doing good deeds a waste that requires stone, because they see that righteousness is righteousness in religion and money together (which is an opinion that the jurists have been confused by what will come .

The jurists did not differentiate between the young and the foolish in the definition, because the foolishness is true of the young, but the reality between the two is the ratio of the general and the particular from one aspect. But his behavior is mentally inappropriate, and one of the other reasons that helped this confusion in the statement is that the archeology and jurisprudence texts mentioned the proofs of foolishness instead of his definitions.

As for the matter of weighting, the definition of Imam Khomeini is one of the best definitions because it is comprehensive and comprehensive.

As for the Iraqi law, the Iraqi civil law did not define foolishness . Article (946) of the magazine: "The ship is causing its money is not in place and is booted in his expenses and wastes its money and is alleged by extravagance and those who are still in taking them and giving them and did not know their trade and enjoy their hearts as well., The civil law did not consider the foolish to be interdicted in and of itself. Rather, it obligated the stone to be imposed on him, and the reason for the stone was to preserve the money of the fool, so the

magazine did not allow the immoral person to be stoned just for his immorality, unless he wasted and extravagant in his money.

And Dr. Hassan Ali al-Dhnoon defined it: It is a waste of money in contradiction to the requirements of reason and wisdom, even if the spending is for the sake of goodness, so the legal scholars, when they see the stone, aim to preserve the money from loss” .

### **Third: Rationalization in terminology:**

The sayings of the fuqaha’ differed about rationalization and its signs, on the sayings of:

1. Saying that righteousness is the reform of money, and its management: Most of the jurists, including the Imamis, went to this saying , and the Hanafis said: The immoral among us is not prohibited if he is a reformer of his money, and Malik sees that rationality is the investment and reform of money only, Whereas the Hanbalis believe that righteousness is righteousness in money.

2. Saying that rationality is Salah al-Din and nothing else: This view was taken by the Zaydis, and the Zahiriyya , for they see that rationality according to the Holy Qur’an is nothing but religion, and contrary to nullity only, not knowledge of earning money in the first place , so it is clear that whoever reaches is distinguished for faith from unbelief He lost his senses of maturity .

3. Saying that rationality is reforming money and religion together: Some Imami jurists took it according to what was mentioned in some narrations that considered the perpetrators of indecency and wrongdoing to be foolish , Sheikh al-Tusi says: But if he is a reformer of his money but is not fair in his religion, or if he is just in his religion but not a reformer of his money, then his money is not paid to him, and when he is not wise, he does not release his stone, even if he reaches maturity and becomes an old man”.

And the Shafi’is said that: righteousness is good in religion and reform in money.

Among the things I am confused about:

1- Justice means the apparent goodness or mere Islam with the absence of immorality, and they are present in people except for the rare.

2- If justice is considered in rationality, the Muslims will not have a market, and they will not be organized ().

There is no reason to stipulate the two things together (reform in money and debt), From the foregoing, the weighting is with what most of the jurists went to, which is the sufficiency of financial righteousness, because there is what supports it :

1- Sayings of the commentators: Righteousness and righteousness in money in particular.

2- Their saying about the infidel is invalidated, as he is not rational in his religion, and he is not prohibited from doing so.

As for Abu Hanifa, adulthood has two meanings to him, the first: its reality before reaching the age of twenty-five, so when a person reaches maturity and supports his maturity, he pays him his money. He knows his senses, he judges with his wisdom,... that squandering his money after this year is easier than wasting his dignity and attaching him to animals.

As for the law, it has taken rationality as a condition for the validity of the behavior of fools, as is the case in Islamic jurisprudence, according to the text of Article 109, where the third paragraph of it stipulates:

### **The second topic**

Ruling on stonewalling fools in Islamic jurisprudence and law

Islamic and man-made legislation stressed in explaining the rulings of stone for fools, the purpose of which is to save money and pay harm to the fool and his family, and the most important of these provisions is what is related to how to rule with stone for fools, and the doctrinal dispute occurred in them, that the establishment of the stone and its removal is achieved by a ruling from the ruler or without him.

Therefore, we will divide this study into two separate sections:

**The first:** the ruling on stonewalling fools in Islamic jurisprudence.

**The second:** the rule of stone for fools in the law.

#### **The first requirement**

Ruling on stonewalling fools in Islamic jurisprudence

The opinions of the jurists agreed not to hand over the money to a person if he reached a foolish age, and they differed on the time of its delivery, and the manner of the stone as well: Is the stone decided by a ruling from the ruler or without him? It seems that it is a matter of jurisprudence of the Emirates in which there are different, so it is entrusted with the consideration of the ruler and custom, and according to what appears there are three statements about it, and for each evidence we mention them briefly:

**First:** The establishment of the stone and its removal depend on the ruling of the ruler: the Imams and other Hanafis and Hanbalis, and among the evidence for that:

1- The stone is a legal ruling that cannot be established or removed except with legal evidence..

2- Foolishness is a hidden matter, and attention to it varies, so it is appropriate that it is dependent on the view of the ruler ().

3- The requirement of the rule “people are in control of their money” requires the validity and enforceability of the actions of fools before judging him.

4- If the stone for the fools was only for his foolishness, this would lead to people falling into hardship and embarrassment, as it is necessary to deal with them, because most of the people are unknown or that most of them are fools.

Those who hold this view concluded that it is necessary to specify a time to verify the existence of foolishness due to the importance of the effects that result from the time of its confirmation, and on the contrary, the fact that this matter remains unknown may lead to harm to many people.

**Second:** The establishment of the stone and its removal does not depend on the ruling of the ruler at all: the owners of this opinion believe that foolishness is sufficient to prevent financial transactions, and they infer that by:

1) The foolishness of the fool is the reason for preventing the fool from disposing of his money.

Al-Bahrani said: The apparent meaning of the aforementioned statement shows the strength of the saying to rule by stone just for the sake of foolishness, and not to stop at the ruling of the ruler, and that the stone also disappears with its removal, because when the disease is removed, its effect is removed.

2) The addition of any restriction with regard to its confirmation or its demise

necessitates that the cause lags behind the effect, and this needs evidence.

3) The Almighty’s saying: “And if you find wisdom among them, then pay them their money.” It is paid to them, so it indicates that the existence of foolishness and its removal are sufficient in establishing and repelling the stone, because foolishness and rationality are opposite.

4) The stone does not depend on the ruling of the ruler at all. The prohibition from disposing of acts is removed as soon as the rationality is achieved by custom. What is customarily dictated is that it is not permissible to dispose of money, then there is no specialty for the ruling of the ruler, because the prohibition of financial disposal is fixed before the ruling of the ruler is issued against him.

**The third saying:** Guardianship in foolishness related to minor remains with the father and does not need the order of the ruler: whoever went to this saying, inferred:

1- The apparent meaning of the verse and the news is the continuation of the established guardianship of the father and grandfather before puberty in the form of the link between foolishness and puberty, as God Almighty says: “If you find wisdom among them, then pay them their money” for its meaning is insane. The guardians have a state of infancy, and they are the father and grandfather and those who have branches over them, without disagreement except with the absence of all of them (), and as he said: in the narration of Hisham bin Salem “And if Yunus had a wet dream and he was not rational or weak, or foolish, then his guardian would hold him”.

2- Guardianship of the father and grandfather was established for them before puberty; The basic principle is that it remains after puberty and before adulthood, in accordance with the companionship.

The research finds that the weighting with those who see the necessity of issuing a ruling from the ruler is more likely to be accepted, as it was mentioned in the tracts that it is the best among the sayings; Because taking money and confiscating it requires an order from the judiciary, and caution and caution must be taken because it is contrary to the principle in the freedom of persons and the rule says people are in control of their money, and therefore the confiscation of the money at that time needs special and strong evidence, which is to be by order of the court, but if we say the father’s

mandate The reason is present and the necessitation is present, and the principle is that the guardianship remains with evidence of the companionship, so the matter is easy and does not need evidence.

### **The second requirement**

#### **The rule of stone for fools in Iraqi law**

The Iraqi legislator, with regard to the stone of fools, took the most correct opinion from the Islamic Sharia, which is that the stone can only be imposed by a decision of the judge, as well as the ruling to lift it, according to Article (95) Civil: The court shall quarantine fools and heedless people, and the stone is announced in the prescribed ways.

It is noted from the operative part of this article, that the Iraqi legislator did not consider the foolish interdicted for himself, and that it stipulated that the stone must be announced and applied the established methods, a phrase that may be attested to the stone through publication in the newspapers, criticized by some jurists (Abu Hanifa), as he does not see Permissibility of stone on fools because the stone is spent on the soul and waste of foolish people, and the soul is more dangerous than money ( ).

Accordingly, it is better for the Iraqi legislator to take other ways to certify the stone, such as requiring that the stone sign be placed on the real estate owned by the fool in the real estate registry records, in order to preserve the rights of the fool and his family, by preventing the fool from disposing of his real estate in a manner that leads to wasting his money, and also that the registration be completed To rule in the Civil Status Department to which the interdict is affiliated, and thus the decision is official and there is no waste of his dignity and does not affect his social standing as a result of his feeling that he has become an unwanted person.

And according to what was stipulated in the third paragraph of Article (109) of civil: "If the interdicted fool acquires maturity, the court removes his stone." The father of the fool or his grandfather Likewise, all his actions that he carried out before the issuance of the decision are valid, unless it is proven that the act took place as a result of cheating or collusion with the person for whom the foolish acted in anticipation of interdiction.

Accordingly, the first paragraph of Article (109) is civil, stating that the interdicted fool is in transactions like a discerning youngster, but the court's guardian or trustee only, and his

father, grandfather and their guardian have no right of guardianship over him, which is contrary to the view of the jurisprudence, as for his actions that occurred before the interdictment is They are valid, unless the act was fraudulent by collusion with the one for whom the foolish acted in anticipation of being stoned.

### **Conclusion**

The conclusion of this research includes a statement of the most important findings and recommendations reached by the researcher by studying some jurisprudential and positional opinions on the subject of quarantine for fools and the rights and entitlements it has in the field of jurisprudence and Iraqi law, which are:

#### **First, the results:**

1. The stone means prevention and sanctity, and its purpose is to prevent the disposal of money, and the ruling on the stone must be from the ruler and must be attested.
2. Foolishness is one of the causes of legal and legal confinement, and it means that a person squanders his money in a way that is not commensurate with the rational affair, even if it is for the sake of good, because it falls into resources that are not required by the interest.
3. The rationality that is one of the conditions for achieving a ban on fools, and it means honesty and good behavior, and it is a hidden matter that needs testing or evidence in order to achieve it in fools.
4. According to the Iraqi Civil Code, and within Article (95), which talks about the court banning fools, and the ban is announced in the prescribed ways, and the law does not specify or clarify these methods.

### **Recommendations**

Among the issues related to the recommendations suggested by the research are:

1. Concerning the definition of a fool, it should be defined as someone who spends his money in a way that leads to wasting a public or private interest. He who spends in a way that does not affect his person, his family, and his social status is not considered foolish.
2. With regard to the stone and its confirmation by a court decision, we suggest that the stone may be proven against the fool in absentia, provided that the news of this stone

reaches the interdicted person later, and thus all of his contracts and records are valid and considered until the time of his notification of the judgment.

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