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## The Duties of the Guardian about the Mentally Retarded: Comparative Study of Qur'an and Afghanistan Civil Law

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Marhamat Jalal <sup>1</sup> Mirwais Momand <sup>2</sup>

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Corresponding Author: Marhamat Jalal. ✉ [marhamatjalal@gmail.com](mailto:marhamatjalal@gmail.com)

**Abstract:** Idiot refers to a person who does not have the ability to manage his own finances, whether he is a young child or a person who has low intelligence or is mentally disabled in general. The Holy Qur'an has not allowed these people to enter and occupy their property due to the possibility of loss. On the other hand, the Qur'an has also mentioned the preservation of the human dignity of these people. In Afghanistan civil law, mentally disabled people or so-called fools are referred to with the word Mahjoor and, like the Holy Quran, they are not allowed to enter and occupy their property. Both in the Qur'an and in the law, the choice of a guardian or guardian has been given, and the powers of their property have been entrusted to the guardian. Using descriptive and analytical methods, this article has analyzed the defined responsibility of society towards mentally retarded people as a subset of Safha in the Qur'an and the Afghan Civil Code. Finally, it was found that there are shortcomings in Afghan's civil rights against the daily needs of mentally challenged people, which are generally mentioned in the Qur'an, but ignored in the law.

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**Keywords:** Qur'an, Guardian, Mentally Retarded, Afghanistan Civil Law, Mahjoor

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### Introduction

From the beginning of human life until now, God has created people in different tribes and nations, with different colors, languages, and personality traits. In the discussion of talent, IQ and the ability to manage life, some people are more capable than others and others are incapable in this matter, and this is one of the characteristics of God's creation.

God's purpose for this diversity in the creation of people and also the creation of people with low mental ability in other words the stupid Quran that is the subject of this article is a divine test to find out how far humans have submitted to God's command and to God's commands regarding responsibility, who are acting towards these people.

In the Qur'an, in two verses of Surah Nisa [5](#) and Surah Al-Baqarah [282](#), God has directly mentioned the responsibility of society towards the stupid (mentally weak) people. Also, considering that these people form a part of society, it is expected that the rights of the subject are also related to the responsibility

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<sup>1</sup> Lecturer at Judiciary and Prosecution Department Faculty of LLB, Alfalah University, Jalalabad, Afghanistan.  
Email: [ug66178@gmail.com](mailto:ug66178@gmail.com)

<sup>2</sup> Lecturer at Judiciary and Prosecution Department Faculty of LLB, Alfalah University, Jalalabad, Afghanistan.  
Email: [Mirwaismomand4@gmail.com](mailto:Mirwaismomand4@gmail.com)

in these people have already paid. Article [319-320](#) of the Civil Code talks about stupid people and provides a definition of stupid.

Also, in other articles of the law, the responsibility of the society towards these people, as well as the civil and criminal responsibility of these people towards the society, has been discussed.

This article tries to deal with the responsibility of the people of the society towards the mentally retarded - which are included in the subcategory of the word "foolishness" in the Qur'an and Mahjoor in law - from the perspective of the Holy Qur'an and the relevant laws of Afghanistan and compares these two to determine what It has been mentioned in the law related to stupid people how much it overlaps with God's commands in the Quran.

### **Problem Statement**

The word "foolishness" has a special meaning from the point of view of Islamic jurisprudence and legal principles. What is mentioned in the Islamic jurisprudence books about the word "sufiyah" shows that "sufiyah" means a person who is ignorant, weak of intellect, and unable to save money. Also, from the point of view of private law, stupid means a person incapable of managing his own affairs ([Article 2](#) of the mentally retarded Code).

From a psychological point of view and in the specialized fields of medicine and psychology, a mentally retarded person is defined as, according to the definition of the mental retardation association, the intellectual function is significantly below the average, which is simultaneously accompanied by limitations in two or more related skills as described below. These skills include Communication, self-care, life at home, social skills, social use, self-direction, health and safety, functional education, leisure time, work, and retardation should be apparent before the age of 18. Since 2007, the term mental mustiness has been changed to the term mental retardation. (Halahan-Kaufman, [1390](#), p. 164) but the definition was changed in 2013, in the new definition based on the Diagnostic Society of Mental Illnesses (DSM-5).

It provides the definition of intellectual disability (intellectual disability, intellectual developmental disorder, intellectual disability during development) as follows.

The main characteristic of intellectual disability is defects in mental abilities such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience. These deficiencies lead to defects in adaptive functioning, such that in one or more aspects of life, including Communicating with others, social participation, academic or occupational performance, personal independence at home or in the community, and social responsibility face problems (Mehdi, [2017](#))

And also in attention, memory, language development, self-management, social development and working memory, of course these people may not show all these characteristics (Halahan Kaufman, [2019](#)).

And it should be noted that people who have cognitive deficits may not have any problems in terms of appearance and physicality or they may be accompanied by physical defects, and since this deficiency can be caused by various causes, there is a possibility that it is co-existing with disorders such as autism, lack of attention along with hyperactivity and... Which is more carefully in the verse of Karima

to the attention that the Almighty God said in dealing with these people means ( وَتُؤْتُوا الْمَهْرَ قَوْلًا مَّعْرُوفًا ) We are encouraged and obliged by God's command. Also, this group is placed in the deep to mild spectrum, which is an alternative to recognize the need and help in treatment and how to teach to acquire social skills and social adequacy.

In general, the inability to save money due to intellectual style or lack of intellect or mental disability is called stupidity. A fool or a spendthrift is someone who uses his property for other purposes and is deceived in his transactions.

Sufiyah is forbidden, that is, he is prohibited from taking possession of his property. It should be known that if the child's stupidity continues after puberty, it is prohibited and there is no need for the ruling of Hajar, because growth is something that must happen and needs proof and confirmation, and if it does not grow, the state of stupidity and stone is accepted.

Sufiyah cannot take possession of her property by selling, donating, renting, endowment and the like, and in the case of taking possession, her possession will not be valid except with the permission of her guardian (Tarihi, 1423).

The Holy Qur'an has spoken about the guardianship of the foolish in verses 5 of Surah Nisa and 282 of Surah Al-Baqarah and specified the guardian's responsibility in these two verses. Also, the civil law of Afghanistan has addressed the guardian's responsibility towards the orphan in a number of legal articles. The purpose of this article is a comparative study of the duties of the guardian against the Mahjur (Safia) in the Qur'an and Afghans civil law.

## Theoretical

The meaning of the word "non-reshid" fool is someone whose possessions in his property and financial rights are not rational, and what is meant by rational is the conventionality of the intellect. In jurisprudence and civil law, a fool is said to be someone whose habit is extravagance and wastefulness in spending, and his financial possessions are not wise (Mohaqq Hali, [1405 AH](#)).

In the law, the words "non-reshid" and "mahjoor" are synonymous with stupidity. In jurisprudence, sufiya means someone who spends his property in non-rational (rational) purposes, and there is no queen or quality in him that causes him to preserve and maintain his property and prevent them from being spent in non-rational ways.

Obviously, sometimes people may be deceived in their transactions and make mistakes; but these exceptional cases are not proof of a person's stupidity. Safah is a sensual quality in humans that causes a person to often spend his property and financial rights in ways that are not worthy of rational actions.

There is not much scientific evidence available about the history of how normal people think about the mentally retarded (lack of wisdom, stupidity). What is clear to some extent is that such people were given less attention in the past and only mentioned in some religious and medical writings. Such people are mentioned.

Hippocrates, the Greek sage, mentions the brain lesions of these people and the connection of these defects with intellectual deficits, or the laws of Sparta included cases that allowed and even deemed it necessary to kill and destroy the disabled, including the mentally retarded. (Dawr Mensh, 1365).

These people make up about 2% of the society and can be seen in all social and economic classes, in both sexes, men and women, and in all ethnicities and races. As far as written sources throughout history tell us, people with mental retardation or some disabilities were despised instead of being helped, even by religious scholars such as Martin Luther (Mesh-Wolf, 2009).

The societies of ancient Greece and Rome believed that any young or old man with a physical or mental disability was economically costly and a source of shame for the society, therefore he was despised and rejected or condemned to death, quoted by French 1977. In the early 19th century, the first systematic efforts were made to educate insane children, who are now called people with mental retardation and emotional or behavioral disorders.

But fortunately, nowadays, contemporary educational methods for exceptional children can be directly traced to the techniques that were pioneers during that era. In fact, many of the important topics of today's discussion are the same topics of the emergence of special education (Halahan-Kaufman, [1390](#))

### Mentally Retarded According Quran

Sufiyah in the Qur'an in the meaning discussed in this article, the word "Sufiyah" in the form of "Al-Sufha" appears twice in the Qur'an in verses 282 of Surah Al-Baqarah and 5 of Surah An-Nisa, which in verse 282 of Surah Al-Baqarah is about financial transactions with Sufiyah. Also, in the Qur'an, the word "foolishness" has been used 4 positions in other meanings (the lack of intelligence of God's enemies), which include the verses of Surah Jin, Surah 140 of 13, Al-Baqarah, 155 of Araaf, and 142 of Al-Baqarah. In the following, the meanings of the word "foolishness" in verses 5 of Surah Nisa and 282 of Surah Al-Baqarah will be discussed.

In verse 5 of Surah Nisa Allah says:

وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَمًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا

(And don't give the possessions that God has ordained for your life to fools, and give them alimony and clothing from their wealth, and speak good and pleasant words to them). Sufiyah is imperfect in reason, in contrast to Rashid and sagcious, who is perfect in reason. (Tyeb, 2008)

A fool is someone who doesn't recognize his benefit and loss and finds gross embezzlement in transactions and spends in vain (Taghafi Tehrani, 2013)

However, it is clear that the meaning of foolishness in the above verse is the lack of sufficient growth in financial matters, so that a person cannot take charge of his property, secure his own interests in financial transactions. (Makaram Shirazi).

«وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ» It is an instructional prohibition because it causes the loss of property, and it is forbidden to waste oneself, such as extravagance, which are considered gross sins, and what is meant by

(اموالكم) may be the property of the deceased, as the appearance of possession (اموالكم) is that Do not put yourself in the hands of fools, they will spoil and destroy them. (Tayeb, 2016)

People should not give the power of their property to such persons, whether they are women or children, relatives, or friends, because property is like life and respectable. he established the place and source of their alimony in the sense that he used the property and allowed it to be used and spent it, and in this ruling, it does not make a difference whether the property belongs to them and is in the hands of a person as a guardian, or the property belongs to the person himself. And let them be his family, because God does not want anyone's wealth to be wasted.

Therefore, what is meant by (الْبَيْعُ جَعَلَ اللَّهُ لَكُمْ فِيهَا) means the consistency of your life in the matter of livelihood to your property, and giving them the inheritance of the disturbance of your livelihood, and it may mean the property of the fools who are in their hands. You are entrusted as a guardian don't give them, the responsibility is with you.

And it may be said that the meaning of (property) is both one's own property and the property of others, so that both directions are included and there is no contradiction with the appearance of (property) and the appearance (وَإِذَا تَوَفَّوهُمْ فِيهَا وَآكُسُوهُمْ), and Allah, the All-Knowing, is the meaning. It is property that is under your control, either in terms of ownership or in terms of guardianship (Tayeb, 1386)

Also, this interpretation clearly shows the importance that Islam attaches to financial and economic issues, and contrary to what we read in the current Bible that "a rich person will never enter the kingdom of heaven", Islam says that a nation that is poor can never be upright.

At the end of the verse, He gives two important instructions about orphans, first, "provide food and clothing for them through their property".

So that they grow up with dignity and reach maturity. (Makaram Shirazi, ibid.)

(وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا))Talk to them in a kind and gentle language as advice and guidance, don't speak with harsh and sharp language, don't say nonsense, those don't have enough sense, they can't correct, and will destroy (Tayeb, 1386) for example, if he is an orphan, they should say: This The property belongs to you and I am your treasurer, and I will surrender it to you at the time of maturity.

And protect him in the way of reward with his possessions in your property; And promise the women that they will like it. In the verse, there is a reason for the permission (Hosseini Shah Abdul Azimi, 1363)

With pleasant and appropriate phrases and words, remove their mental deficiency and help their "intellectual growth" so that they have sufficient intellectual growth at the time of maturity, and in this way, their character building program will also be part of the duties of supervisors.

Attention should be paid to the spiritual dimensions and personality of the deprived.

Undoubtedly, banning people from taking possession of their property will result in their reaction. Therefore, the solution is to deal with it and speak kindly.

Verse 282 of Surah Al-Baqarah, God says in this verse

«...فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُحْمِلَ حَقَّهُ فَاصْبِرْ لَهُ بِعَدْلٍ...»:

(...and if the debtor is stupid or weak (minor) and does not have the ability to dictate, but his guardian should spell correctly and justice ...). In this verse, God mentions that it is necessary for the debt to be regulated by their elders. In this regard, he issues orders to the guardian.

Whenever the person who owes the debt (debtor) is stupid or (in terms of intellect) weak (and insane) or (due to being mute) is unable to spell, his guardian must dictate" (Makaram Shirazi, ibid)

There is a difference between the commentators (analyst) that the three words: foolish, weak and impossible (does not have the ability) are the same or similar in meaning or different in meaning, and in the case of a difference in meaning, there is another difference in the meaning of each one, but all of these are interpretations and we should not give up on the appearance. (Tayeb, 1386).

Therefore, if the debtor who is "I have right against" is foolish, in contrast to intellectual, that is, he does not distinguish between the good and the bad of wealth and transactions, that is, he is demented, not so much as insanity, that he is demented and fulfills his duties, or he is weak, like a child, a madman, and someone who has Alzheimer's. or he is unable to spell due to being mute or heavy of the tongue or a disease that causes him to lose the power to speak or difficulty speaking, in this case his guardian and guardian must do his financial affairs (Tayeb, 1386).

"Guardian" must also "observe justice" in writing and acknowledging the debt of those under her guardianship.

According to what has been said, therefore, regarding the three tribes, "Guardian" should be dictated, those who are stupid and cannot distinguish their losses and benefits and organize their finances (even if they are not crazy) and those who are crazy. Or they are intellectually weak and weak-minded, such as young children and old people who are weak and weak-witted, and dumb people, or those who do not have the ability to spell, even if they are not dumb. In this altogether, other rulings are also used implicitly. Including the prohibition of financial possessions by the foolish and weak-minded, as well as the permission of the guardian to interfere in such matters (Tayeb, 2006).

The laws related to the mentally retarded and mentally disabled people are specified in the Quran with the word "Sufaha" and in the law with the word "mahjurin", but what is written about the rights of mentally disabled people in Afghanistan civil law is more to the extent of comparing these people with a normal person is a mentally retarded person, even if he reaches the age of puberty, according to the law, he is still the same as a person who has not reached the legal age and is considered a minor child.

Although this is true from the point of view that mentally retarded people have not reached perfection in terms of intellect, but what needs to be addressed in the constitution and its place is very empty in the law is the educational needs of emotional development and the physical and mental characteristics of these people, how to deal with them. It is with these people and others that the empty place of these laws in the laws of Afghanistan's civil law is well felt.

In Afghani law, we actually see many ambiguities regarding the rights of mentally disabled people. It seems that the civil law focuses more on the duties of a mentally disabled person than on the rights of this person. And therefore, in the law, the word forbidden is used for these people, and their legal actions are not valid. In the definition of Hajar, jurists write that hajar means that a person is prohibited from interfering with his property and financial rights by the law (Abdullah Nizamudin, 1997).

Regarding the prohibition of entry and possession of property, it seems that this is closer to justice, as the order of God Almighty is the same in the Qur'an, and in the law, an immature and minor person, even if he is of sound mind, is also allowed to enter and occupy It does not have its own property, which is also due to the prevention of financial losses of these people, therefore, any transaction that these people do is legally void and even not able to be cited (Safaei and Qasimzadeh, 1999)

### **Mentally Retarded According Afghanistan Civil Law**

A review of Afghan's civil law shows that there is no specific law to protect the mentally disabled, but the laws that are generally stated regarding citizenship rights can be extended to disabled or mentally disabled people, or in other words, to the disabled.

In the following, some of these laws are re-read and their generalization is examined: the right to education, which according to Article 1 of the Law on Provision of Educational Equipment and Facilities for Afghan Children and Young People, people with mental disabilities also have the right to education, this article states: "All children And young Afghans who are eligible for education should study without any obstacles and no one can stop them from studying except with legal permission. But unfortunately Afghan girl's schools band only.

As seen in this article, all Afghan children have the right to education and mentally retarded children are not exempted from this.

Also, in Article 42 of the Constitution of the Islamic Republic of Afghanistan, it is stipulated that the government is obliged to provide free education facilities for all the nation until the end of secondary school and to expand the facilities of higher education for free up to the limit of the country's self-sufficiency, and this article also includes exceptional children. And there is no evidence that mentally retarded children are excluded from this matter, and this law includes all children in Afghanistan, including mentally retarded children (Rasoly ,M Ashraf, 1997).

In the discussion of the equal rights of the mentally retarded child with other people, the 42th principle of the constitution, and 3-4 articles of Education law of Afghanistan which says that all the people of the nation, including men and women, are under the protection of the law, it can be cited that the mentally retarded child is also one of the people of the nation and should benefit from this protection. .

Regarding the working of mentally disabled children, we can also refer to article of the Labor Law, which prohibits the working of people under the age of fifteen, and this article also includes mentally disabled people, but regarding the employment of people and their right to work at older ages. In the law, there is no legal consideration for mentally disabled people, and this natural right of these people is not given importance, while mentally disabled people, like other people with disabilities such as sight,

hearing, etc., can work in jobs that do not harm them. It is not possible for them to work and benefit from the right to employment and financial independence (Katouzian, 1999) .

By examining Afghanistan's laws, it was found that these laws have serious problems in the field of supporting disabled and mentally retarded people who make up three percent of the country's total population and are considered as part of the society.

The first problem is that, except in articles of the Civil Law, which talks about the intrusion and seizure of prisoners' property, there is no mention of these people in any other place, and there is no mention of their rights in the same law. Also, disabled or mentally retarded people have been called insane, which is not a word of respect, and considering the negative meaning that this word carries, the use of this word has problems and is considered as an insult to these people. Even in the science of psychology, psychologists are not satisfied with using the word mentally retarded (Al-san, 2008)

Also, in the section on the inalienable rights of these people, the legislator has not specified anywhere what rights the disabled or mentally retarded have and how to achieve these rights. Mentally disabled people also have these rights as a part of the society, but it has not been determined how mentally disabled people can benefit from these rights.

Another important issue is that due to their limitations, these people need more emotional attention than healthy people in the society, but unfortunately, they are severely neglected in the society and even by their families, although in the Quran and in the fifth verse of Surah Al-Nisa, God commands good behavior and In lenity words, talking to these people is emphasized.

But this issue and paying attention to the emotions and feelings of these people has no place in the law, and from this point of view, Afghanistan's civil laws have serious problems. It seems that it is necessary to enact a law to oblige support families to help the emotional rights of their mentally disabled children, or even if these people submit to welfare homes, families are required to set aside hours a week to visit their children and meet their emotional needs. And in case of violation of this law, fines should be considered for them

But unfortunately, this fact, which is a direct order of God, is not taken in attention in the laws, and it causes a serious blow to the strong feelings of these people. The guardian's responsibility in the civil law. In the civil law of Afghanistan, the word Mahjoor is used instead of what the Qur'an calls "Safia". The law has defined the word Mahjoor as follows: "The Mahjoor are those who have some physical and mental limitations, and for this reason the legislator must support them" (Mansour, 2018)

Also, the law introduces the guardian as follows: "The guardian is the person who is appointed by the court to supervise and manage the affairs of the deceased in the absence of a special guardian (father, paternal grandfather, and executor)" (Mansour, 2018, Vol. 2: 113)

The law does not allow a group of people to be guardians. Those who are themselves under guardianship , those who have been convicted due to committing one of the crimes of theft, betrayal of trust, defamation of honor or chastity, embezzlement, committing crimes against children, bankruptcy due to a final verdict, those who Their bankruptcy has been issued and their bankruptcy has not yet been



settled, those who are known for moral corruption and those whose first-class relatives (father, mother, children and grandchildren) have a dispute over Mahjoor cannot be guardians (Katouzian, 2011).

In general, the law has provided a lot of powers for the guardian, but these powers are not as strong as the powers of the coercive guardian and executor. But what is meant is the guardian's financial powers. According to the law, before intervening in the financial affairs of the accused, the guardian is obliged to send a comprehensive statement of the accused's property to the court's office, and the court office and his representative must carry out the necessary investigations regarding the amount of the accused's property, and the guardian must also calculate the time of tenure. Also, whenever his guardianship is terminated, he must give an account of his tenure to the next guardian (Katouzian, 2011).

According to the law, a guardian can interfere with movable property, but with respect to immovable property, he must interfere with it with the permission of the court. He himself is entitled to it, and if he has a complaint about the performance of his guardian that he did not follow expediency, he can file a complaint with the legal authorities, but in this case, the guardian can also claim that he followed expediency in maintaining the property by presenting documents. (Katouzian, 2011).

The guardian, as a person who has the authority over the property of the Safiyah (incapable) in his hands, has the powers and duties mentioned in the previous sections in the Qur'an and the civil law. In this section, they will be compared. According to what is stated in the Qur'an, the property that belongs to a Safiyah should not be given to her due to her inability to manage financial affairs. The Afghan Civil Code also mentions the same issue, and for the Safiyah and Mahjoor, if they have a special guardian, their special guardian and if they do not have a specific guardian, a guardian will be appointed.

But what has been addressed in the Quran and somehow neglected in the law is the moral responsibility towards the foolish person, as God says in the fifth verse of Surah Nisa: "Speak to them with kindness and wellness." which has dealt with the mental and personality aspects of the fool, but there is no word in the law about how to treat the fool and Mahjoor.

In the Qur'an and the law, it is also mentioned the responsibility of entering into forbidden and stupid contracts, and it has been mentioned that just as the Qur'an entrusted the preparation of the documents for the stupidity to their guardians, the law also gave this duty to the guardians, but in the law, according to more details The existence of civil laws compared to the general laws of the Qur'an has also been set for the guardian, for example, in some transactions, the guardian is not allowed to interfere in the possession of private property, and in some cases, this interference must be with the permission of the court, but in the Quran and paying attention to the generality of the Quran's rulings, there is a hint. It has not happened to these cases.

## Conclusion

As part of the body of the society, the fools and mentally retarded need support from the society, and therefore, in the Holy Qur'an, God has emphasized the problem of fools and how their financial affairs differ from their lives.

In this way, people who are not able to manage their property for any reason and cannot make wise financial decisions should be appointed a guardian for them, and duties are also considered for him, including the duties of paying current living expenses from his property.

Allah is the one who has paid attention to this issue in the fifth verse of Surah Nisa, The Quran has emphasized on the issue of good behavior and talking softly with nonsense.

Further, in verse 282 of Surah Al-Baqarah, the Qur'an says that Safiyah cannot enter into a contract by himself, and his guardian must enter into a contract on his behalf.

This issue is also mentioned in the Civil Code, it is mentioned who needs to appoint a guardian. In the following, the law describes the duties of the guardian, since the law also pays attention to details.

In the Civil Law of Afghanistan, powers are also considered for the guardian and the limits of authority in movable property are directly given to the guardian.

The authority to deal and any interference in immovable property is subject to the approval of the prosecutor, and of course, the guardian is not allowed to interfere in some matters that are not discussed in this article.

The main difference between Qayyim's(guardian) discussion on stupidity in the Quran and civil law is the detailing in the law and the generality of the Quran's rulings. Also, due to its legal nature, the emotional and psychological issues of inability and stupidity have not been considered in the law.

However, due to the fact that the Qur'an is inclusive and comprehensive in all aspects, it also addresses this issue and instructs the guardian to speak kindly and gently with the foolishness. In the end, it can be said that the main difference between the rules of the Qur'an and the legal articles of the civil law is the partiality of the law and the generality of the rules of the Qur'an.

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