



The Islamic Legal Status of an Autistic Husband's Divorce

A Detailed Case Study

Abstract

Most contemporary fatawa literatures particularly of the Indo-Pak subcontinent scholars generally lack extensive research on the implications of mental health on divorce. This fatwa article seeks to explore the legal implications of mental disability in an Islamic divorce, citing a case study of autism that we recently received in our fatwa department so to keep the study focused. In light of the classical Hanafi legal principles, we concluded that based on the autistic husband's mental capacity, he had fallen deficient in terms of his ahliyyah rendering him similar to a ma'tooh in the Shari'ah and hence in light of those principles, his pronouncement of three divorces was overruled.

1. Introduction

Mental health is a broad topic that branches out into various categories. They vary respectively in their degree of impact on the patient's mental condition. Its negative effects on the Muslim community cannot be disregarded as it impacts many Islamic rulings related to a Muslim's mundane life. In our understanding, extensive research of its implications on Islamic divorce among the Indo-Pak contemporary traditional Muslim jurisconsults (muftis) is scarce as the majority of the fatwa rulings concerning such matters tend to offer generic responses without providing elaborative jurisprudential discussion around both its theoretical principles and its application in light of both classical fiqh and modern understanding of mental health. Providing simplistic rulings without a deep understanding of mental health leaves many questioners either unsatisfied with the responses or misconstruing the fatwa. The present article therefore takes the initiative to explore this overlooked area using a case study of autism we recently received in our fatwa department. It begins by first identifying fundamental issues concerning autism and then progressing on to elucidating the concept of taklif and ahliyyah. It further examines the legal status of a





mentally impaired husband's divorce in light of the classical Hanafi tradition. Finally, an entire section is dedicated to applying the Shar'ī status of the autistic husband's divorce in question. The article concludes with the final verdict and with some recommendations on the discussion. It must be noted that we intentionally limited the discussion to the Hanafi legal perspective only due to the nature of the case.

2. Autism and its Fundamental Issues

Autism is a type of developmental disability that affects the way the individual communicates, interacts and experiences the world around them. It is most often associated with other mental illnesses such as depression, anxiety and so forth. It merely indicates that an autistic brain functions at a different capacity from normal people. They mostly require support in their everyday interaction with the world around them.¹ Autism varies on the spectrum line and is not the same for everyone as in, some autistic people can be extremely smart with higher IQ levels whilst others may not be so intelligently smart. The common thread across the spectrum is their inability to intelligently interact with others around them. The most common traits according to many experts include;

- Struggle to communicate with people and understand how they feel or think.
- Take longer to process and comprehend information.
- Get overwhelmed, anxious and upset with unfamiliar situations,² and loud noises and don't like bright lights.
- Often reiterate things repetitively without necessarily comprehending what they are saying.³
- Difficulty in focussing on specific tasks and retaining information.
- Challenges in problem-solving.

¹ Mental Health foundation (2022), [Autism and mental health | Mental Health Foundation](https://www.mentalhealth.org.uk/a-to-z/a/autism-and-mental-health), <https://www.mentalhealth.org.uk/a-to-z/a/autism-and-mental-health> [Accessed March 2022]

NHS [What is autism? - NHS \(www.nhs.uk\)](https://www.nhs.uk/conditions/autism/what-is-autism/), <https://www.nhs.uk/conditions/autism/what-is-autism/> [Accessed March 2022]

² One example could be is family conflict that triggers their anxiety.

³ Ibid





According to experts, seven out of ten people with an autistic condition can include other symptoms such as attention deficit hyperactivity disorder (ADHD), obsessive-compulsive disorder (OCD), dyslexia, depression and epilepsy.⁴ It implies that autism is not treated autonomously without taking one of the above factors into consideration. They suffer mentally at variant levels with some experiencing a higher level of distress than others on the spectrum line.⁵ This can potentially impact their ability to comprehend their statements, actions and rational thinking especially when they encounter hostile situations and struggle to convey their emotions during emotional outbursts. This is different to anger because anger itself is not uncommon and nor is it usually associated with mental illness.⁶ Autistic people can be diagnosed with other mental health symptoms accompanying their current autism such as intellectual and language impairment, disruptive behaviour, conduct disorder, impulsive control disorder, bipolar disorder and self-harm. These symptoms as many experts argue manifest during childhood and remain until adulthood. It is rare for an adult to be diagnosed with autism without experiencing it during childhood irrespective if it was diagnosed earlier or not.⁷

⁴ Mental Health foundation (2022), *Autism and mental health*, <https://www.mentalhealth.org.uk/a-to-z/a/autism-and-mental-health> [Accessed March 2022]

⁵ National Autistic Society, (no date), *Anxiety*, available at: <https://www.autism.org.uk/advice-and-guidance/topics/mental-health/anxiety> [Accessed March 2022]

⁶ By this we mean that exhibiting anger when triggered by someone or something is part of human nature. It is thus not a good enough excuse for a husband to claim he was mentally unwell when divorcing in anger as seldom does a husband divorce without being angry.

⁷ Mental Health foundation (2022), *Autism and mental health | Mental Health Foundation*, <https://www.mentalhealth.org.uk/a-to-z/a/autism-and-mental-health> [Accessed March 2022]

NHS *What is autism? - NHS (www.nhs.uk)*, <https://www.nhs.uk/conditions/autism/what-is-autism/> [Accessed March 2022]

Rudy, L.J. (2022), *Signs and Symptoms of Autism*, available at: <https://www.verywellhealth.com/autism-symptoms-4014330> [Accessed March 2022]



The primary concern for our discussion is intellectual impairment and its implication on divorce rulings in light of the recent complex divorce case we received in our fatwa department, the details of which are further elaborated in section 5 of this article. It basically recalls an autistic husband claiming to be mentally unstable since childhood and takes medication even to date for his treatment, pronounced three divorces simultaneously to his wife due to family pressure. He claimed to be mentally unstable when he pronounced three divorces simultaneously due to suffering from anxiety attacks, emotional outbursts and uncontrollable behaviour at the time. By his own admission, he lacked full comprehension of what he uttered leading him to make an irrational decision. A mufti determines legal rulings are based on external matters whilst consigning the true intentions in one's heart to Allāh Himself. To adequately address the case in question, we need to address the following matters in light of the Sharī'ah principles;

1. Is an autistic person deemed mukallaf in the Sharī'ah or not?
2. Is he deemed insane by the Sharī'ah standards or not?
3. Are his actions legally valid which in our case, pronouncing divorce?

It is necessary to highlight from the outset that mental impairment must not be confused with intense anger as the latter is part of human nature and not generally caused by an external illness. Anger is an emotional reaction that an individual vents towards an undesirable thing without necessarily impairing one's ability to think and to comprehend statements and actions. As a default stance, until an angry person is not professionally diagnosed with severe mental disabilities, he bears liability for his actions in the Sharī'ah and his divorce is legally valid.⁸

⁸ Zuhayli, Fiqhul Islami wa adillatihu, inhilal al-zawaj wa atharathi, vol 7 p. 352

طلاق الغضبان: يفهم مما ذكر أن طلاق الغضبان لا يقع إذا اشتد الغضب، بأن وصل إلى درجة لا يدري فيها ما يقول ويفعل ولا يقصده. أو وصل به الغضب إلى درجة يغلب عليه فيها الخلل والاضطراب في أقواله وأفعاله، وهذه حالة نادرة. فإن ظل الشخص في حالة وعي وإدراك لما يقول فيقع طلاقه، وهذا هو الغالب في كل طلاق يصدر عن الرجل؛ لأن الغضبان مكلف في حال غضبه بما يصدر منه من كفر وقتل نفس وأخذ مال بغير حق وطلاق وغيرها

3. Who is Deemed Mukallaf (Legally commissioned) in the Sharī' ah?

Muslim jurists deduced extensive legal rulings from the sacred texts, juristic principles and applied case studies on Shar'ī liability, also known as taklif. Having familiarity with those principles is essential to avoid any potential misapplication of the rulings especially in divorce cases. Taklif is a technical term which simply means someone fulfilling all of the legal criteria for the implementation of Islamic legal injunctions. A person fulfilling those prerequisites is known to be a mukallaf. The conditions of taklif include being a Muslim, mentally sane, sexually mature (bāligh), physical well-being and so forth. Absence of any of the above absolves them from legal liability. For instance, Salāh is not binding upon a minor child or a disbeliever because of not fulfilling Shar'ī liability. Legal jurists have elucidated on each of the above and added more conditions to the list which is beyond the scope of our discussion. Our primary concern is the extent to which someone with mental disability is absolved from the Sharī' ah responsibilities. Usuli (legal theorists) scholars discuss two fundamental conditions for a mukallaf;

1: The first condition is possessing the capacity to fully comprehend and understand the khitāb (the addressing command) which is only possible through sound and complete intellect (a' ql). Al-Āmidī رحمته الله writes; *"All of the intellectuals have unanimously agreed that it is conditional for the mukallaf to possess cognitive rationality to (bear) liability (of the command) because such bearing is a khitāb and the khitāb for the one who does not have any rationality nor (possesses) any understanding (fahm) is implausible such as solid substances and animals."*⁹

⁹ Al-Āmidī, *Ihkām Fī Usūl al-Ahkām*, vol 1, p. 150

[السؤال الأول شرط المكلف]

الأصل الرابع في المحكوم عليه وهو المكلف وفيه خمس مسائل

السؤال الأول

اتفق العقلاء على أن شرط المكلف أن يكون عاقلًا فاهمًا للتكليف؛ لأن التكليف وخطاب من لا عقل له ولا فهم محال

كالجماد والبهيمة. ومن وجد له أصل الفهم لأصل الخطاب، دون تفصيله من كونه أمرًا ونهيًا، ومقتضى القواب والعقاب ومن





In citing the classical Usūli scholars, Zuhayli summarises the relationship between fahm and a'ql in the following way, *"The ability to understand (fahm) is with intellect (a'ql) because the a'ql is the faculty of understanding and comprehension (by grasping what is being said)... ..and because the a'ql is amongst the conceal matters, the legislator has therefore attached talkif to matters attainable with (apparent) senses which are bulūgh and āqil because bulūgh is a sign of a'ql that comprehends good and bad and benefit and harm... ..for this (reason) a majnūn and a minor child are not mukallaf because of the a'ql not fully encompassing the understanding of the evidence of taklif."*¹⁰

Zuhayli stresses that sound a'ql is the pinnacle to fully comprehend (i.e. fahm) the task and the command sought. However, since it is an internal matter, the Shari'ah attaches bulūgh as an apparent sign of attaining complete rationality because at this juncture, the individual develops full cognition and comprehension of their surroundings and grasps the ability to distinguish between right from wrong and good from bad. His sound intellect as he further mentions can be determined by, *"what transpires from his speech and conduct in terms of his amiability (ma'loof) amongst people. Thus, whoever attains bulūgh and no signs of impairment in the faculty of intellect becomes apparent, then he becomes mukallaf."*¹¹

2: The second condition concerning rationality is the natural capacity (ahliyyah) to discharge their responsibilities and affirm their rights. Zuhayli refers to ahliyyah as salāhiyyat which means possessing the natural ability to discharge a command appropriately which is affirmed by one's rationality and comprehension. This is because

كَوْنِ الْأَمْرِ بِهِ هُوَ اللَّهُ تَعَالَى، وَأَنَّهُ وَاجِبُ الطَّاعَةِ، وَتَكْوِينِ الْأُمُورِ بِهِ عَلَى صِفَةِ كَذَا وَكَذَا كَالْمَجْتُونِ وَالصَّبِيِّ الَّذِي لَا يُمَيِّزُ، فَهُوَ بِالنَّظَرِ إِلَى فَهْمِ التَّفَاصِيلِ كَالجَمَادِ وَالْبَهِيمَةِ بِالنَّظَرِ إِلَى فَهْمِ أَصْلِ الحِطَابِ،

¹⁰ Zuhayli, Usūl al-Fiqh Islami, p. 158

¹¹ ibid

On this principle, a Majnun and a minor non-differentiating child are not mukallaf due to their inability of understanding the khitab of the Shari'ah. As for a differentiating child, (after the age of 7) then despite this, his intellect rationality still remains deficient. (usul fiqh Islami)





of the sound a'ql they possess that predicates their cognitive ability.¹² According to Usuli scholars, ahliyyah implies to, "A human's capability to affirm their rights and manage (ada) their dealings."¹³ Managing and discharging their dealings he comments, occurs through one's statements and actions as deemed appropriate by the Shari'ah which is plausible only when one's ability to cognitively differentiate between things is intact.¹⁴

A person's ability to discharge their religious obligations - ahliyyah al-ada - be it worship, financial dealings or any other religious duties is contingent on their cognitive state. Such cognitive ability could be either partial (nāqis) or complete (kāmil). Zuhayli elucidates this as follows;¹⁵

1: Ahliyyah al-Ada Naqis – A person possessing ahliyyah but in a deficient capacity. In other words, their comprehension level is deficient to those of average adult persons. For instance, a minor child between the age of rudimentary understanding (above the age of 7) until bulūgh and a ma'tooh struggling to comprehend and differentiate between right from wrong due to mental impairment but not to the degree of total insanity. This excludes a non-differentiating (ghayr mumayyiz) minor child (below the age of 7) and a majnūn (total insanity/lunacy) which means that their statements and actions have no legal implications. As for a differentiating (mumayyiz) child and a ma'tooh, then jurists state that their enactment of religious worship such as Salāh, fasting or declaration of Imān and so forth are valid and rewardable but not yet compulsory. As for their personal dealings related to the rights of servants (huquq al-Ibad), Zuhayli discusses that such matters either comprise pure benefit, harm or both.

¹² Ibid

¹³ ibid

¹⁴ Ibid (p. 157)

The Hanafi scholars divide ahliyyat into two categories; the first is affirming one's right and the obligations known as ahliyyatul Wujub. The second pertains to ahliyyat-ada which is discharging the obligatory act as described above.

¹⁵ Zuhayli, Usūl al-Fiqhī Islami, pp. 166-168





- a) Dealings comprising of pure benefit are deemed valid such as obtaining possession like receiving gifts or sadaqah.
- b) Dealings that are purely harmful (or likely to lead to harm) for instance, relinquishing ownership like pronouncing divorce, presenting a gift or giving sadaqah etc are not legally valid.
- c) If it comprises both harm and benefit such as Nikah, transactional dealings etc then it will be valid for a differentiating child with his guardian's consent otherwise not.

2: Ahliyyah al-Ada Kāmil – This implies to complete state of comprehension and cognition of the Shari' ah laws which applies to a bāligh and a sane Muslim person. All unanimously agree that they bear full liability to discharge their Shari' ah obligations and to forsake them without a genuine excuse makes them sinful and accountable before Allāh.¹⁶

Conclusively, the Shar'ī conditions for any Muslim to qualify as mukallaf in terms of their mental capacity can be summed up as follows;

1. Cognitive ability to fully comprehend and acknowledge the legal rights they bear and discharge them correctly.
2. The capacity to distinguish between right from wrong and harm from benefit.
3. Intellectual capacity to be in its complete form and not deficient as of which, minor children whether being able to differentiate or not are excluded from the remit of taklif.¹⁷
4. Sound a' ql along with bulūgh both of which qualify as complete ahliyyah.

¹⁶ Exemptions may include an ill person, menstruation, travelling etc all of which are expounded on the details books of fiqh.

¹⁷ A minor child above the age of 7 until bulūgh has some ability to differentiate right from wrong, so worship such as Salāh and fasting are encouraged but not obligatory on them.





5. One's mode of action and statements through which responsibilities are discharged must be ratified by the Shari'ah. For this reason, a majnūn's statement for instance has no legal implication.

In those instances where a non-mukallaf's dealings are not deemed valid in the Shari'ah such as a minor child and a mentally incapacitated person (i.e. a majnūn) then the legal guardian (wali) acts as their agent such as managing their financial expenses. As for those with partial ahliyyah, as outlined above, then depending on what type of dealing it entails, the wali may and may not intervene. For instance, in the case of a financial transaction that is likely to cause potential harm allow the wali to intervene. In divorce matters the wali cannot issue it on his behalf but can facilitate the process for him. But having a nikah contract according to the Hanafies is contingent on the wali's permission hence in a hypothetical scenario, an insane or partially insane person contracting their marriage by themselves would be legally void.¹⁸

The concern whether an autistic adult is considered mukallaf in the Shari'ah or not depends on his status of ahliyyah. An autistic adult is not completely devoid of making independent decisions since many can study and work. Autism as previously mentioned is a spectrum with varying mental abilities between individuals respectively. They are still identified with social and mental disorders when associated with rational impairment and other mental conditions. The injunctions would ultimately depend on the degree that their cognitive and rational capability has been negatively impacted leading to react impulsively, making irrational decisions, lacking comprehension and uncontrollable behaviour. Should this be the case then arguably, he falls under the genre of ahliyyah al-ada naqis – deficient in discharging or managing his legal responsibilities.

¹⁸ Fatawa Hindiyyah, Kitāb al-Nikāh, vol 1, p. 267

[البَابُ الْأَوَّلُ فِي تَفْسِيرِ النِّكَاحِ شَرْعًا وَصِفِيهِ وَرُكْنِهِ وَشَرْطِهِ وَحُكْمِهِ]
(وَأَمَّا شُرُوطُهُ) فَمِنْهَا الْعَقْلُ وَالْبُلُوغُ وَالْحُرِّيَّةُ فِي الْعَاقِدِ إِلَّا أَنَّ الْأَوَّلَ شَرْطُ الْإِنْعِقَادِ فَلَا يُنْعَقِدُ نِكَاحَ الْمَجْنُونِ وَالصَّبِيِّ الَّذِي لَا يَعْقِلُ
وَالْأَخِيرَ إِنْ شَرَطَا النَّفَادَ؛ فَإِنَّ نِكَاحَ الصَّبِيِّ الْعَاقِلِ يَتَوَقَّفُ نَفَادَهُ عَلَى إِجَارَةِ وَلِيِّهِ هَكَذَا فِي الْبَدَائِعِ



The below section further explores the status of an intellectually impaired husband's divorce.

4. Intellectual Impairment and Divorce

Generally, the jurists unanimously agree that a mentally insane person's divorce is not valid due to the absence of ahliyyah. The prominent Hanafi jurist Kamāl Uddīn Ibn Humām رحمته الله states;

*"What is known from the universal (principles) of the Shari'ah is that dealings are not endorsed except for the one who possesses the ahliyyah of dealing that revolves specifically on a'ql and bulūgh, that which pivots especially on (recognising) what is harmful and beneficial... ..such as divorce that demands complete intellect through which (the ability of) differentiating (between) matters is determined."*¹⁹

The Messenger of Allāh ﷺ negated the effectiveness of an insane person's divorce in the following words, "Every divorce is valid except that of a ma'tooh whose intellect has been overpowered."²⁰

The Hadith is explicit that any person whose intellect is overpowered through insanity then his divorce is not valid. So how does one distinguish between sanity and insanity?

¹⁹ Ibn Humām, Fathul Qadeer, Kitāb al-Talāq vol 3, p. 487

لَكِنَّ مَعْلُومٌ مِنْ كَلِمَاتِ الشَّرِيعَةِ أَنَّ الْعَصْرُفَاتِ لَا تَنْفَعُ إِلَّا بِمَنْ لَهُ أَهْلِيَّةُ الْعَصْرِفِ وَأَدْرَاغًا بِالْعَقْلِ وَالْبُلُوغِ خُصُوصًا مَا هُوَ دَائِرٌ بَيْنَ الْعُسْرِ وَالنَّفْعِ خُصُوصًا مَا لَا يَحِلُّ إِلَّا لِإِنْفَاءِ مَصْلَحَةٍ طَبِئِهِ الْقَائِمِ كَالطَّلَاقِ فَإِنَّهُ يَسْتَعْدَى تَمَامَ الْعَقْلِ لِيُحْكِمَ بِهِ التَّمْيِيزَ فِي ذَلِكَ الْأَمْرِ

²⁰ Sunnan Tirmidhi No: 1191

بَابُ مَا جَاءَ فِي طَّلَاقِ الْمَعْتُوهِ
عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «كُلُّ طَّلَاقٍ جَائِزٌ، إِلَّا طَّلَاقَ الْمَعْتُوهِ الْمَغْلُوبِ عَلَى عَقْلِهِ»

Hanafi jurists such as Imām Burhanudīn رحمته الله and Badruddīn al-Ayni رحمته الله consider the individual's mode of speech and action to be the determining factors. A rationally sane person is someone whose speech and conduct remains intact at all times or at least on most occasions, contrary to an insane person whose actions and statements are mostly impaired. If a rationally sane person outwardly mimics acts similar to an insane person, then that is unintentional whereas a majnūn does it intentionally.²¹ Despite this being oversimplistic and vague, it suggests that regular abnormality in the husband's speech and action during the occasion of divorce is indicative of his intellectual impairment. A careful study of the classical Hanafi texts reveals a spectrum within insanity. Insanity has three levels;

1: Majnūn – takes the root form of junūn and janna which means to conceal something. Technically, it refers to an intellectual impairment which is, the total inhibition or

²¹ Burhanudeen Mahmud b, Ahmad, Muheet Burhani Kitāb al-Talaq, vol 3, p. 206

الفصل الثالث: في بيان من يقع طلاقه ومن لا يقع طلاقه

طلاق الصبي غير واقع، وكذلك طلاق المجنون والمعتوه، وقيل في الحد الفاصل بين المعتوه والمجنون والعاقل أن العاقل من يستقيم كلامه وأفعاله فيكون هذا غالباً، وذلك غالباً فيكون سواء، قيل أيضاً: المجنون من يفعل هذه الأفعال لا عن قصد والعاقل يفعل ما يفعله المجانين في الأحيان لكن لا عن قصد يعني يفعل على ظن الصلاح، والمعتوه من يفعل ما يفعله المجانين في الأحيان لكن عن قصد يعني يقصد فعله مع ظهور وجه الفساد.

Binayah Sharhu Hidayah vol 5 p. 298-299

[فصل من يقع طلاقه ومن لا يقع] [طلاق الصبي والمجنون والنائم]

(والمجنون) ش: من جن الرجل وأجنه الله فهو مجنون، ولا تقل مجنون، وقيل الفاصل بين المجنون والمعتوه والعاقل أن العاقل من يستقيم كلامه وأفعاله، والمجنون ضده، والمعتوه من يكون ذلك منه على السواء. وقيل: المجنون من يفعل ما يفعله المجانين أحياناً عن قصد، والعاقل ما يفعله المجانين أحياناً لا عند قصد، على ظن الصلاح. والمعتوه يفعل ما يفعله المجانين عن قصد مع ظهور الفساد.

وفي "الصحيح" المعتوه: الناقض العقل. وفي "الدخيرة" من كان قليل الفهم، مختلط الكلام، فاسد التدبير إلا أنه لا يضرب ولا يشتم كما يفعله المجنون.

disruption of the rational faculty rendering it impossible to differentiate between right from wrong and good from bad. They experience abnormality in their behaviour and speech.²² Ibn Ābidīn Shāmi رحمته الله defines it as follows; “Junūn is the impairment of the ability to distinguish what is (morally) good and bad and (failing) to comprehend its consequences, whereby its effects (i.e. impairment) are not visible and his conduct is disrupted. (This occurs) either due to disruption in his actual brain, or removing the mind from its natural state due to some perplexity or (an existential) calamity, or due to the overpowering of the shaytān over him who casts corrupt thoughts causing him to laugh and worry without a valid cause.”²³

Ibn Ābidīn Shāmi رحمته الله identifies junūn to be an external calamity that has affected the individual’s mind and inhibits the rational faculty to be able to recognise or comprehend right from wrong and corruption in his actions without fully perceiving the rationale behind it. Lunacy or junūn itself has a spectrum and sub-divides into multiple categories according to the jurists. One categorisation is based on the time length; if it is prolonged

²² Mawsoo’atul Fiqhiyyah Kuwaitiyyah vol 16, p. 99

الْجُنُونُ فِي الْمَعْنَى: نَصَدَرَ جَرَّ الرَّجُلِ بِالْبِنَاءِ لِلْمَجْهُولِ، فَهُوَ مَجْنُونٌ: أَي زَالَ عَقْلُهُ أَوْ فَسَدَ، أَوْ دَخَلَتْهُ الْحَيْرَةُ، وَجَرَّ الشَّيْءُ عَلَيْهِ: سَعْرَةً. وَأَمَّا فِي الإِصْطِلَاحِ فَقَدْ عَرَفَهُ الْفُقَهَاءُ وَالْأَصُولِيُّونَ بِعِبَارَاتٍ مُخْتَلِفَةٍ مِنْهَا: أَنَّهُ إِحْيَالُ الْعَقْلِ بِحَيْثُ يَمْنَعُ جَرَيَانُ الْأَفْعَالِ وَالْأَقْوَالِ عَلَى تَهَجُّهِ إِلَّا نَادِرًا. وَقِيلَ: الْجُنُونُ إِحْيَالُ الْقُوَّةِ الْمُمَيِّزَةِ بَيْنَ الْأَمْثَلِ وَالْحَسَنَةِ وَالْقَبِيحَةِ الْمُدْرِكَةِ لِلْعَوَاقِبِ بِأَنْ لَا تَطْهَرُ آثَارُهَا، وَأَنْ تَتَعَطَّلَ أَفْعَالُهَا. وَعَرَفَهُ صَاحِبُ الْبَحْرِ الرَّائِقِ بِأَنَّهُ: إِحْيَالُ الْقُوَّةِ الَّتِي بِهَا إِذْرَاكُ الْكُلِّيَّاتِ.

²³ Durrul Mukhtār wa hashiyah Ibn Ābideen Shāmi, Kitāb Talāq vol 3, p. 241

(لَا يَتَّعُ طَلَاقُ الْمَوْتَى عَلَى امْرَأَةِ عَبْدِهِ) ----- (وَالْمَجْنُونُ) إِذَا عَلِقَ عَاقِلًا ثُمَّ جَرَّ فَوُجِدَ الشَّرْطُ (قَوْلُهُ وَالْمَجْنُونُ) قَالَ فِي التَّلْوِيحِ: الْجُنُونُ إِحْيَالُ الْقُوَّةِ الْمُمَيِّزَةِ بَيْنَ الْأُمُورِ الْحَسَنَةِ وَالْقَبِيحَةِ الْمُدْرِكَةِ لِلْعَوَاقِبِ، بِأَنْ لَا تَطْهَرُ آثَارُهَا وَتَتَعَطَّلَ أَفْعَالُهَا، إِمَّا لِنُقْصَانِ جَبَلٍ عَلَيْهِ دِفَاعُهُ فِي أَصْلِ الْخَلْقَةِ، وَإِمَّا لِخُرُوجِ مِزَاجِ الدِّمَاغِ عَنِ الإِعْتِدَالِ بِسَبَبِ خَلطٍ أَوْ آفَةٍ، وَإِمَّا لِإِسْيَالِ الشَّيْطَانِ عَلَيْهِ وَإِلْقَاءِ الْحَيَالَاتِ الْفَاسِدَةِ إِلَيْهِ بِحَيْثُ يَفْرَحُ وَيَفْرَحُ مِنْ غَيْرِ مَا يَصْلُحُ سَبَبًا. اهـ. وَفِي الْبَحْرِ عَنِ الْحَنَائِيَّةِ: رَجُلٌ عَرَفَ أَنَّهُ كَانَ مَجْنُونًا فَقَالَتْ لَهُ امْرَأَتُهُ: طَلَّقْتِي الْبَارِحَةَ فَقَالَ: أَصَابَنِي الْجُنُونُ وَلَا يَعْرِفُ ذَلِكَ إِلَّا بِقَوْلِي كَانَ الْقَوْلُ قَوْلَهُ. اهـ.

and permanent then it is mumtad but if it does not extend for a longer period then it is ghayr-mumtad. The general position is that mumtad absolves all obligatory worship but ghayr-mumtad does not absolve the injunctions of taklif albeit there are differences among the jurists in this also.²⁴ There are many forms of categorisations of junūn but beyond the scope of our discussion.

2: Madhosh – Zuhayli refers to this as someone who fails to comprehend his own speech and actions and both becoming impaired due to extreme fear, anxiety or extreme or intense rage due to an external calamity.²⁵ His ability to differentiate between moral and immoral behaviour as Ibn Ābideen Shāmi رحمته الله states is depreciated. There is some contention whether this is a subcategory of junūn or not. Ibn Nujaym رحمته الله does not consider madhosh to be any different to junūn but the majority distinguish it as a lesser degree than junūn.²⁶ Apparent signs include raving in speech without comprehension of what the person is saying.

²⁴ Mawsoo'atul Fiqhiyyah Kuwaitiyyah vol 16, p. 101

فَالْجُنُونُ إِذَا كَانَ مُؤْتَمِدًّا سَقَطَ مَعَهُ وَجُوبُ الْعِبَادَاتِ فَلَا تُشْغَلُ بِهَا ذِمَّتُهُ، وَإِنْ كَانَ غَيْرَ مُؤْتَمِدٍّ وَهُوَ طَارِئٌ لَمْ يَمْتَنِعِ التَّكْلِيفَ وَلَا يَنْفِي
أَصْلَ الْوَجُوبِ؛ لِأَنَّ الْوَجُوبَ بِالذِّمَّةِ، وَهِيَ ثَابِتَةٌ، وَلِذَلِكَ يَرِثُ وَيَمْلِكُ، وَإِنْ كَانَ غَيْرَ مُؤْتَمِدٍّ، وَكَانَ أَصْلِيًّا فَحُكْمُهُ عِنْدَ مُحَمَّدٍ حُكْمُ
الْمُؤْتَمِدِّ؛ لِأَنَّهُ نَاطِقٌ الْإِسْقَاطِ بِالْكَلِّ مِنَ الْإِمْعَادِ وَالْأَصَالَةِ، وَقَالَ أَبُو يُوسُفَ: حُكْمُهُ حُكْمُ الطَّارِئِ فَيُنَاطِقُ الْإِسْقَاطِ
بِالْإِمْعَادِ

²⁵ Zuhayli, Fiqhul Islami wa adillatihu, inhilal al-zawaj wa atharihi, vol 7 p. 352

طلاق الجنون والمدهوش: ولا يصح طلاق الجنون، ومثله المغمي عليه، والمدهوش: وهو الذي اعترته حال انفعال لا يدري فيها ما يقول أو يفعل، أو يصل به الانفعال إلى درجة يغلب معها الحلل في أقواله وأفعاله، بسبب فرط الخوف أو الحزن أو الغضب، لقوله صلى الله عليه وسلم: «لا طلاق في إغلاق» (1) والإغلاق: كل ما يسد باب الإدراك والقصد والوعي، لجنون أو شدة غضب أو شدة حزن ونحوها.

²⁶ Durrul Mukhtār wa hashīyah Ibn Ābideen Shāmi, Kitāb Talāq vol 3, p. 244

(وَالْمُدْهَشُ) فَتَحَّ. وَفِي الْقَامُوسِ: دَهَشَ الرَّجُلُ تَحَيَّرَ وَدَهَشَ بِالْبَنَاءِ لِلْمَفْعُولِ فَهُوَ مُدْهَشٌ وَأَدْهَشَهُ اللَّهُ

3: Ma'tooh – falls under the lowest degree of insanity. Jurists explain that it is the impairment of the rational faculty due to an external calamity but not to the extent as the above two. According to some Usuli jurists, "It is a calamity that causes impairment in the intellect whereby its victim confuses speech. His statements can sometimes resemble rational (and sane) people and at times resemble insane people too."²⁷ The difference however between a ma'tooh and a majnūn is that the former has limited understanding due to his confusion in speech and immoral decisions (fāsīd tadbīr) but does not behave insanely like a majnūn as in behaving disorderly such as self-sabotaging. He, as indicated previously, has been equated to a differentiating minor child in legal injunctions as the laws of Shari' ah are not mandated on him and neither is his divorce effective.²⁸

(قَوْلُهُ وَفِي الْقَامُوسِ دَهْشٌ) أَيُّ بِالْكَسْرِ كَفَرِحَ. ثُمَّ إِنَّ أَفْهَمَ عَلَى ذِكْرِ التَّحْيِيرِ غَيْرُ صَحِيحٍ، فَإِنَّهُ فِي الْقَامُوسِ قَالَ بَعْدَهُ أَوْ: ذَهَبَ عَقْلُهُ حَيَاءً أَوْ خَوْفًا هُوَ وَهَذَا هُوَ الْمُرَادُ هُنَا، وَلِذَا جَعَلَهُ فِي الْبَحْرِ دَاخِلًا فِي الْمَجْنُونِ.

مَطْلَبٌ فِي طَلَاقِ الْمَدْهُوشِ وَقَالَ فِي الْحَيَّرِيَّةِ: غَلِطَ مَنْ فَسَّرَهُ هُنَا بِالتَّحْيِيرِ، إِذْ لَا يَلْزَمُ مِنَ التَّحْيِيرِ وَهُوَ التَّوَدُّدُ فِي الْأَمْرِ ذَهَابُ الْعَقْلِ. وَسُيِّلَ نَظْمًا فِيمَنْ طَلَّقَ زَوْجَتَهُ ثَلَاثًا فِي مَجْلِسِ الْقَاضِي وَهُوَ مُعْتَاطٌ مَدْهُوشٌ، أَجَابَ نَظْمًا أَيْضًا بِأَنَّ الدَّهْشَ مِنْ أَقْسَامِ الْجُنُونِ فَلَا يَقَعُ، وَإِذَا كَانَ يَعْتَادُهُ بِأَنْ عُرِفَ مِنْهُ الدَّهْشُ مَرَّةً يُصَدَّقُ بِلَا بُرْهَانٍ

Mawsoo'atul Fiqhiyyah Kuwaitiyyah vol 16, p. 99

الدَّهْشُ فِي اللُّغَةِ: مَصْدَرٌ دَهَشَ، يُقَالُ دَهَشَ الرَّجُلُ أَيُّ تَحْيَّرَ، أَوْ ذَهَبَ عَقْلُهُ مِنْ ذَهَلٍ أَوْ وَلِيٍّ، وَدَهَشَ أَيْضًا عَلَى مَا تَمَّ يُسَمَّى فَاعِلُهُ فَهُوَ مَدْهُوشٌ. (1) وَلَا يَخْرُجُ اسْتِعْمَالُ الْمُفْهَمَاءِ عَنْ هَذَيْنِ الْمَعْنَيَيْنِ فَهَمَّ يُطْلَقُونَ عَلَى الْمُتَحْيِرِ وَعَلَى ذَاهِبِ الْعَقْلِ، وَقَدْ جَعَلَ الْحَنَفِيُّ الْمَدْهُوشَ الَّذِي ذَهَبَ عَقْلُهُ دَاخِلًا فِي الْمَجْنُونِ.

²⁷ Mawsoo'atul Fiqhiyyah Kuwaitiyyah vol 16, p. 99

الْعَتَّةُ فِي اللُّغَةِ: نُقْصَانُ الْعَقْلِ مِنْ غَيْرِ جُنُونٍ أَوْ دَهْشٍ. وَهُوَ عِنْدَ الْمُفْهَمَاءِ وَالْأُصُولِيِّينَ أَفْعٌ تُوجِبُ خِلَافًا فِي الْعَقْلِ فَيَصِيرُ صَاحِبُهُ مُخْطِئًا كَالْإِسْلَامِ، فَيُشْبِهُ بَعْضُ كَلَامِهِ كَالْإِسْلَامِ الْعَقْلَاءِ، وَيَعْضُهُ كَالْمَجَانِينِ، وَكَذَا سَائِرُ أُمُورِهِ.

²⁸ Mawsoo'atul Fiqhiyyah Kuwaitiyyah vol 16, p. 99

وَالْفَرْقُ بَيْنَ الْجُنُونِ وَالْعَتَّةِ، أَنَّ الْمَعْتَوَةَ قَلِيلُ الْفَهْمِ مُخْطِئُ الْكَلَامِ، فَاسِدُ التَّدْبِيرِ، لَكِنْ لَا يَضْرِبُ وَلَا يَشْتُمُّ بِخِلَافِ الْمَجْنُونِ. وَصَرَّحَ الْأُصُولِيُّونَ بِأَنَّ حُكْمَ الْمَعْتَوَةِ حُكْمُ الصَّحِيِّ الْمُمَيَّرِ، إِلَّا أَنَّ الدُّبُوسِيَّ قَالَ: يُجِبُّ عَلَيْهِ الْعِبَادَاتُ اسْتِحْيَاطًا، وَقَالَ صَدْرُ الْإِسْلَامِ: إِنَّ الْعَتَّةَ نَوْعٌ جُنُونٍ فَيَمْنَعُ آدَاءَ الْحُقُوقِ جَمِيعًا.

Ibn Nujaym, Bahr Rāiq, Kitāb al-Talaq, vol 3 p. 268

A critical assessment of the above reveals that despite the subtle distinctions between the above three categories, the pivotal point is mental impairment leading to dysfunctional behaviour and speech and also a lack of comprehension. This does not entail recalling previous actions as a necessary condition as many would assume because remembering is sometimes possible like with a minor child. Ibn Ābidīn Shāmi رحمته الله himself acknowledges that recollecting previous actions is possible albeit still deemed insane if they rave by confusing seriousness with imprudence. He states, "What is apparent to me is that regarding madhosh and anger, it doesn't have to be the case where he does not know what he said but it suffices that if raving and confusing seriousness with imprudence becomes dominant in him like the fatwa has been given in regards to a drunker discussed previously (that he can still recollect past memories). This (recollection of past memories) does not oppose the definition of dahsh with the inhibition of the intellect because verily insanity has a spectrum, and it is why the author of Bahr interprets it (insanity) as intellectual impairment."

Ibn Ābidīn رحمته الله in the same paragraph further argues that intellectual impairment and dysfunctional speech and behaviour (due to an external calamity) should predicate as

وَأَزَادَ بِالْمَجْنُونِ مَنْ فِي عَقْلِهِ إِحْيَالٌ فَيَدْخُلُ الْمَعْنُوهُ وَأَحْسَنُ الْأَقْوَالِ فِي الْفَرْقِ بَيْنَهُمَا أَنَّ الْمَعْنُوهُ هُوَ الْقَلِيلُ الْفَهْمِ الْمُخْتَلِطُ
الْكَلَامَ الْفَاسِدَ التَّدْبِيرِ لَكِنْ لَا يَضْرِبُ وَلَا يَشْتَمُ بِخِلَافِ الْمَجْنُونِ وَيَدْخُلُ الْمُبْرَسَمُ، وَالْمَعْنَى عَلَيْهِ، وَالْمَدْهُوشُ، وَبِ
الصِّخَاحِ الْبُرْسَامِ ذَلِكَ مَعْرُوفٌ، وَبِ بَعْضِ كُتُبِ الطَّبِّ أَنَّهُ وَرَمَ حَارٌّ يَعْضُ لِلْحِجَابِ الَّذِي بَيْنَ الْكَبِدِ، وَالْمَعَالِمُ يَتَّصِلُ بِالذِّمَاحِ
وَهُوَ مُعَرَّبٌ وَبُرْسِمَ الرَّجُلُ بِالْبِنَاءِ لِلْمَفْعُولِ يُقَالُ بَرَسَمَ وَبَلَسَمَ وَهُوَ مُبْرَسَمٌ وَمُبْلَسَمٌ

Durrul Mukhtār wa hashiyah Ibn Ābideen Shāmi, Kitāb Talāq vol 3, p. 243

(وَالْمَعْنُوهُ) مِنَ الْعَتَةِ، وَهُوَ إِحْيَالٌ فِي الْعَقْلِ
(قَوْلُهُ مِنَ الْعَتَةِ) بِالْمَحْرَبِ مِنْ بَابِ تَعَبٍ مُصْبَاحٌ (قَوْلُهُ وَهُوَ إِحْيَالٌ فِي الْعَقْلِ) هَذَا ذَكَرَهُ فِي التَّبْحَرِ تَعْرِيفًا لِلْمَجْنُونِ وَقَالَ وَيَدْخُلُ
فِيهِ الْمَعْنُوهُ. وَأَحْسَنُ الْأَقْوَالِ فِي الْفَرْقِ بَيْنَهُمَا أَنَّ الْمَعْنُوهُ هُوَ الْقَلِيلُ الْفَهْمِ الْمُخْتَلِطُ الْكَلَامَ الْفَاسِدَ التَّدْبِيرِ، لَكِنْ لَا يَضْرِبُ
وَلَا يَشْتَمُ بِخِلَافِ الْمَجْنُونِ اهـ وَصَرَّحَ الْأَصُولِيُّونَ بِأَنَّ حُكْمَهُ كَالصَّبِيِّ إِلَّا أَنَّ الدَّبُّوسِيَّ قَالَ تَجِبُ عَلَيْهِ الْعِبَادَاتُ إِحْتِيَاطًا.
وَرَدَّهُ صَدْرُ الْإِسْلَامِ بِأَنَّ الْعَتَةَ نَوْعٌ جُنُونٍ فَيَمْنَعُ وَجُوبَ آذَاءِ الْحَقُوقِ جَمِيعًا كَمَا بَسَطَهُ فِي شَرْحِ التَّجْرِيرِ

Jurists such as Imām Dabusi have mandated Ibadat on a ma'tooh as a precaution bother jurists reject this and redeem him from ahliyyat altogether.

the legal ratio (illat) for insanity whether or not they are able to recollect past memory. "It is, therefore, necessary to underscore the ruling of a madhosh or otherwise with the overpowering of impairment (mentally) affecting their statements and conduct which removes them from normality in their conduct and likewise anyone whose sanity is impaired due to old age, illness or a calamity that has struck him. Therefore, so long as during the dominant impairment (of their mental state affecting their) actions and statements, their statements are not valid irrespective if they can remember what they are saying and intend it because their recognition and intention of anything is not valid due to their inability of sound comprehension (in what they are saying) just like a minor sane child's (statements) is not valid."²⁹

We must be mindful here that an angry person who divorces his wife claiming not to recall his previous actions is not due to any mental impairment. Relatively, it should be interpreted as intense rage causing him to forget which is not uncommon.³⁰ He

²⁹ Durrul Mukhtār wa hashiyah Ibn Ābideen Shāmi, Kitāb Talāq vol 3, p. 244 – shamila

هَذَا الْمَوْافِقُ عِنْدَنَا لِمَا مَرَّ فِي الْمَذْهُوسِ، لَكِنَّ يَرُدُّ عَلَيْهِ أَنَّا لَمْ نَعْتَبِرْ أَقْوَالَ الْمَعْتُوبِ مَعَ أَنَّهُ لَا يَلْزَمُ فِيهِ أَنْ يَحْصِلَ إِلَى خَالَةٍ لَا يَعْلَمُ فِيهَا مَا يَقُولُ وَلَا يُرِيدُهُ وَقَدْ يُجَابُ بِأَنَّ الْمَعْتُوبَ لَمَّا كَانَ مُسْتَمِرًّا عَلَى خَالَةٍ وَاجِدَةٍ يُمْكِنُ ضَبْطُهَا أَعْتَبِرَتْ فِيهِ وَانْكُفَى فِيهِ بِمَجْرَدِ نَقْضِ الْعَقْلِ، بِخِلَافِ الْعَضْبِ فَإِنَّهُ عَارِضٌ فِي بَعْضِ الْأَحْوَالِ، لَكِنَّ يَرُدُّ عَلَيْهِ الدَّهْشُ فَإِنَّهُ كَذَلِكَ. وَالَّذِي يَطْهَرُ لِي أَنْ كَلَّا مِنْ الْمَذْهُوسِ وَالْعَضْبَانِ لَا يَلْزَمُ فِيهِ أَنْ يَكُونَ بِحَيْثُ لَا يَعْلَمُ مَا يَقُولُ بَلْ يَكْتَفِي فِيهِ بِغَلَبَةِ الْهَدْيَانِ وَالْحَتْلِاطِ الْجَدِّ بِالْهَزْلِ كَمَا هُوَ الْمُنْفَى بِهِ فِي السُّكْرَانِ عَلَى مَا مَرَّ، وَلَا يُنَافِيهِ تَعْرِيفُ الدَّهْشِ بِدَهَابِ الْعَقْلِ فَإِنَّ الْجُنُونَ فُتُونَ، وَلِذَا فَسَّرَهُ فِي الْبَحْرِ بِاخْتِلَالِ الْعَقْلِ وَأَدْخَلَ فِيهِ الْعَتَةَ وَالرِّسَامَ وَالْإِعْمَاءَ وَاللَّهْشَ. وَيُؤَيِّدُهُ مَا قُلْنَا قَوْلَ بَعْضِهِمْ: الْعَاقِلُ مَنْ يَسْتَقِيمُ كَلَامُهُ وَأَفْعَالُهُ إِلَّا نَادِرًا وَالْمَجْنُونُ ضِدُّهُ. وَأَيْضًا فَإِنَّ بَعْضَ الْمَجَانِبِ يَعْرِفُ مَا يَقُولُ وَيُرِيدُهُ وَيَذْكُرُ مَا يَشْهَدُ الْجَاهِلُ بِهِ بِأَنَّهُ عَاقِلٌ ثُمَّ يَطْهَرُ مِنْهُ فِي مَجْلِسِهِ مَا يُنَافِيهِ، فَإِذَا كَانَ الْمَجْنُونُ حَقِيقَةً قَدْ يَعْرِفُ مَا يَقُولُ وَيَقْصِدُهُ فَعَبْرَةٌ بِالْأَوَّلِ، فَالَّذِي يَنْبَغِي التَّعْوِيلُ عَلَيْهِ فِي الْمَذْهُوسِ وَنَحْوِهِ إِطَاةُ الْحُكْمِ بِغَلَبَةِ الْحَلَلِ فِي أَقْوَالِهِ وَأَفْعَالِهِ الْخَارِجَةِ عَنْ عَادَتِهِ، وَكَذَا يُقَالُ فِيمَنْ اخْتَلَّ عَقْلُهُ لِكِبَرٍ أَوْ لِمَرَضٍ أَوْ لِمُصِيبَةٍ فَاجْتَانَهُ: فَمَا دَامَ فِي حَالِ غَلَبَةِ الْحَلَلِ فِي الْأَقْوَالِ وَالْأَفْعَالِ لَا تُعْتَبَرُ أَقْوَالُهُ وَإِنْ كَانَ يَعْلَمُهَا وَيُرِيدُهَا لِأَنَّ هَذِهِ الْمَعْرِفَةَ وَالْإِرَادَةَ غَيْرُ مُعْتَبَرَةٍ لِغَدَمِ حُصُولِهَا عَنِ الْإِدْرَاكِ صَحِيحٍ كَمَا لَا تُعْتَبَرُ مِنَ الصَّبِيِّ الْعَاقِلِ،

³⁰ Durrul Mukhtār wa hashiyah Ibn Ābideen Shāmi, Kitāb Talāq vol 3, p. 369

therefore remains mukallaf and liable for his actions in divorce as well as in other criminal activities such as committing kufr or murder and so forth.³¹

5. A Legal Case Study of an Autistic Husband's Divorce Status

After discussing the theoretical principles related to mental impairment from classical Hanafi legal perspective, this section seeks to apply those legal principles to the case of an autistic husband's divorce. The selected case is complex as many mental health issues were associated with the autistic husband in question who was diagnosed with ASD since early childhood. Seeking consultation with medical professionals and accessing

قُلْتُ: وَمُقْتَضَى هَذَا الْمَرْجِعِ أَنَّ مَنْ وَصَلَ فِي الْعُضْبِ إِلَى حَالَةٍ لَا يَدْرِي فِيهَا مَا يَقُولُ بَقَعُ طَلَاقَهُ وَإِلَّا لَمْ يَحْتَجِ إِلَى اعْتِمَادِ قَوْلِ الشَّاهِدَيْنِ أَنَّهُ اسْتَعْتَفَى مَعَ أَنَّهُ مَرَّ أَوَّلَ الطَّلَاقِ أَنَّهُ لَا يَقَعُ طَلَاقُ الْمَدْهُوشِ. وَأُقْتَضَى بِهِ اخْتِيارُ الرَّثَلِيِّ فِيمَنْ طَلَّقَ وَهُوَ مُعْتَاطٌ مَدْهُوشٌ لِأَنَّ الدَّهْشَ مِنْ أَقْسَامِ الْجُنُونِ. وَلَا يَحْتَمَى أَنْ مَنْ وَصَلَ إِلَى حَالَةٍ لَا يَدْرِي فِيهَا مَا يَقُولُ كَانَ فِي حُكْمِ الْمَجْنُونِ، وَقَدَفْنَا الْجَوَابَ هُنَاكَ بِأَنَّهُ لَيْسَ الْمُرَادُ بِمَا هُنَا أَنَّهُ وَصَلَ إِلَى حَالَةٍ لَا يَدْرِي مَا يَقُولُ بِأَنَّهُ لَا يَقْصِدُهُ وَلَا يَفْهَمُهُ مَعْنَاهُ بَحَيْثُ يَكُونُ كَالنَّائِمِ وَالسَّكَرَانِ، بَلْ الْمُرَادُ أَنَّهُ قَدْ نَسِيَ مَا يَقُولُ لِاسْتِغْثَالِ فِكْرِهِ بِاسْتِغْثَالِ الْعُضْبِ، وَاللَّهُ تَعَالَى أَعْلَمُ

مُقْتَضَاهُ أَنَّهُ إِذَا كَانَ لَا يَدْرِي مَا يَقُولُ بَقَعُ طَلَاقَهُ وَإِلَّا فَلَا حَاجَةَ إِلَى الْأَخْذِ بِقَوْلَيْهِمَا إِنَّكَ اسْتَعْتَفَيْتَ، وَهَذَا مُشْكِلٌ جَدًّا، وَإِلَّا أَنْ يُجَابَ بِأَنَّ الْمُرَادَ بِكُونِهِ لَا يَدْرِي مَا يَقُولُ أَنَّهُ لِقُوَّةِ عَضْبِهِ قَدْ نَسِيَ مَا يَقُولُ وَلَا يَتَذَكَّرُهُ بَعْدَ، وَلَيْسَ الْمُرَادُ أَنَّهُ صَارَ يَجْرِي عَلَى لِسَانِهِ مَا لَا يَفْهَمُهُ أَوْ لَا يَقْصِدُهُ إِذْ لَا شَكَّ أَنَّهُ جَبِينٌ يَكُونُ فِي أَعْلَى مَرَاتِبِ الْجُنُونِ،

³¹ Zuhayli, Fiqhul Islami wa adillatihu, inhilal al-zawaj wa atharhi, vol 7 p. 352

طلاق الغضبان: يفهم مما ذكر أن طلاق الغضبان لا يقع إذا اشتد الغضب، بأن وصل إلى درجة لا يدري فيها ما يقول ويفعل ولا يقصده. أو وصل به الغضب إلى درجة يغلب عليه فيها الخلل والاضطراب في أقواله وأفعاله، وهذه حالة نادرة. فإن ظل الشخص في حالة وعي وإدراك لما يقول فيقع طلاقه، وهذا هو الغالب في كل طلاق يصدر عن الرجل؛ لأن الغضبان مكلف في حال غضبه بما يصدر منه من كفر وقتل نفس وأخذ مال بغير حق وطلاق وغيرها

See our previous fatwa on divorce in anger (2021) is available at the below link
<https://jknfatawa.co.uk/divorce-in-the-state-of-anger/>





his medical records were necessary to be fully acquainted with his mental condition.³² The couple were married for a few years through family consent (on both sides) and after one year into the marriage, they began experiencing problems in their relationship. Under normal circumstances, he is mentally stable but when encountering hostile situations, it triggers his anxieties and loses control. Factors that contributed to the relationship breakdown included communication problems, arguments, external influences from in-laws, lack of emotional connection and so forth. Other factors also included finances and work issues for the husband. The stress accumulated over time exacerbated his mental condition leading to occasional outbursts, rage and rumination. His in-laws were unwilling to reconcile and pressured him into divorcing their daughter. During heated arguments, he experienced anxiety attacks and uncontrollable emotional outbursts. After undue pressure from others, he impetuously pronounced three simultaneous divorces. The family approached us to seek a fatwa regarding their case scenario. We invited them to the office and exchanged discussions of both the case and his medical report. Below is a summary of the actual case with central points highlighted in bold. We intentionally removed the unnecessary details including names.

*My eldest son is autistic and although he can talk normally, he struggles with (amongst other stuff) understanding and expressing emotions and therefore struggles to control his anger outbursts and can react impulsively without thinking when he's not being listened to or understood. Occasionally he doesn't realise what he is saying and doing and the effects it has on people when he loses control of his anger and behaviour during a meltdown when he is overwhelmed with emotions and anxiety **because of his autism** - he has been like this since childhood. He suffers with **an anxiety disorder** and at the time of the incident below he was **clinically depressed and his anxiety symptoms had worsened causing him anxiety attacks** almost daily for a couple of weeks and was not sleeping well. He was prescribed antidepressants and referred to counselling. My son was forced into a discussion by his in-laws despite being told several times that he didn't want to speak and needed some personal time and space to collect his thoughts as he wasn't in the right frame of mind to speak. **He struggles***

³² We have intentionally omitted the details of the case study to respect the anonymity of the family. The husband granted verbal consent for his case to be used as part of the research case study provided that his name was anonymised. Detail exchanges of conversations and necessary questions with the husband have not been included.





*to regulate his emotions and the whole situation caused him to have an anxiety attack and a meltdown. He was responding to people in English during the argument but wasn't able to control himself in what he was saying as he **was overwhelmed with anxiety and anger**, and wasn't in the right frame of mind. It got very heated, he lost control and unintentionally told his wife you're divorced in fit of rage. At the time he wasn't aware of what he had said/was doing and what it meant for him. He had not been thinking straight for some time as a result of his mental health and his judgment was therefore clouded.*

*Does the divorce take effect in his case, taking into account his uncontrollable anger outbursts due to **his autism, depression and anxiety** and considering he didn't intend it and wasn't aware of what he had said/done and the implications of it?*

Pronouncing a verdict based on anger alone would be unwarranted without considering his mental state, so we requested medical evidence from his psychiatrist to describe his mental condition. For confidentiality purposes, we omitted the husband's name and included only the relevant parts of the original report whilst excluding irrelevant details. The medical report concluded as follows;

Report: "(Person) has deficits attributed to ASD in; communication, social interaction, executive functioning, emotional regulation and has alexithymia. (Person) fails to adequately understand and process his emotions and therefore lacks the ability to effectively communicate his feelings of disturbance, anxiety or distress. This can lead to outbursts of anger whereby he says things in a manner not intended and can often be misunderstood as he fails to translate his actual thoughts. The impulsive nature of (person) verbal and physical behaviours are in part caused by the difficulties he has with modulating his anger and interpreting his own and other emotions... (Person's) cognitive perseveration and rumination can be another trigger for his emotional and angry outbursts, as he becomes overloaded with information past the point of being able to process and comprehend the situation."

This section describes social disorder and his inability to communicate his feelings. Upon questioning him, he responded that his anxiety overclouds his mind and feelings, as of which he lacks emotional awareness of the other. Occasional emotional outburst





he confirmed was the only way he knew how to communicate his feelings when under pressure. The report further suggested that he loses self-control and lacks comprehension of his surroundings;

Report: "During these meltdowns, (person) loses awareness and self-control over his behaviour and can become uncontrollably angry; either verbally or physically and lacks comprehension in his communication and actions. These meltdowns and outbursts are impulsive and lack any rational thinking... and particularly struggles to process information during this period... (Person) struggles to recall the events of the meltdown."

Upon questioning whether he recalled giving divorces or not, he claimed that he could not due to the intensity of the situation and the family pressure. When asked how, he responded that he was unable to rationally comprehend his surroundings due to his anxiety attack clouding his judgment and wanted to escape from the situation but was refused which further exacerbated his mental condition. This was also witnessed by other family members present.

Report: "It is also important to note that anxiety, low mood and depression can negatively affect memory and (person) suffers from generalised anxiety disorder and has struggled with major depressive disorder both in the past as a result of his childhood traumas and more recently over the past few months due to several personal issues.... (Person's) mental state was affecting his judgment resulting in uncharacteristic mistakes in his personal and work life due to constant ruminating thoughts causing poor concentration and increasing forgetfulness."

After extensive discussion, the following factors emerged from the above enquiries and report;

1. Not being able to control his anger
2. Emotional outbursts through aggression and not being able to convey his feelings properly, as a result at times loses control over himself





3. Diagnosed with autism since childhood and still undergoing treatment.
4. Suffers from depression and overwhelming anxiety attacks during conflicts.
5. Lacks rationality in his judgment and comprehension in his actions and speech.
6. Struggling to recall past actions due to cloudy judgment, extreme forgetfulness and rumination.

Clear signs indicated that the husband was suffering from what Ibn Ābidīn Shāmi رحمته الله and other Hanafi jurists describe as *ikhtilat al-a'ql* – mental impairment, which as they argue underscores the ruling of his divorce being ineffective. As was previously explained, *ikhtilat al-a'ql* ensues a lack of comprehension of surroundings and dysfunction in one's speech and behaviour. The husband in question therefore in our understanding falls similar to a *ma'tooh*; a degree below insanity as in, albeit not totally *majnūn* but still below the threshold of an average rationally sane person which renders his divorce as invalid. The ruling was issued based on the episode he described at the time, bearing in mind that autistic people's condition fluctuates from time to time.

6. Conclusion

The fatwa article aimed to discursively demonstrate the application of legal principles of *ahliyah* to a real-life case of autism. The foregoing discussion elucidated that intellectual impairment known as *ikhtilat al-a'ql* that impairs one's cognitive understanding, speech and action which consequently removes them from a normative state, renders them as non-*mukallaf*, i.e. absolving them from certain aspects of the Sharī'ah rulings. In light of the legal principles and the medical report, we concluded that the autistic husband in question was similar to a *ma'tooh* in ruling rendering his divorce invalid. It must be noted that the above discussion was addressed in light of a particular case and so we are meticulous not to generalise this ruling to all autistic people as non-*mukallaf* by default because of the existing spectrum between them. Each case must be approached uniquely and judged on its own merit in light of the Sharī'ah principles. Along with their medical history, their mental condition at the time of divorce must be thoroughly assessed through questioning and demand witnesses before





issuing a legal verdict. We aimed to shed light on the rational process of applying legal principles when addressing complex divorce cases that involved mental instability. We acknowledge the limited scope of the discussion in this paper nevertheless, considering the rise of mental health crises among South Asians particularly those who are married, it is an important area that requires much-needed attention. It is hoped that this paper paves the way for stimulating further discussions in this overdue area amongst the circle of contemporary muftis in presenting a theoretical framework which integrates classical legal tradition with contemporary knowledge of mental health and its implications on divorce.

Allāh ﷻ Knows Best

Mufti Abdul Waheed

Senior researcher at JKN Fatawa Department

20th March 2024/10th Ramadhān 1445 AH

Acknowledgment

This article was thoroughly researched by Mufti Abdul Waheed under the supervision and attestation of Shaykh Mufti Saiful Islām Sāhib (may Allāh preserve him), the founder of JKN Fatāwa Department. The author wishes to thank those medical professionals who supported us in this research through advice, feedback comments, recommendations and support in locating certain materials for this subject. We pray that Allāh ﷻ rewards them for their kind efforts and make this work as a means of Sadaqah Jāraiyyah for them also, Amīn.

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