

INVESTIGATING THE LEGAL AND JURISPRUDENTIAL BASICS AND MANDATES OF PERSONAL AND PUBLIC HEALTHCARE NON-OBSERVATION WITH AN EMPHASIS ON THE NEWLY EMERGING CONTAGIOUS DISEASES

Abdollah Jalili¹, Davood Dadashnejad², Morteza Barati³

¹Ph.D. Candidate of Jurisprudence and the Fundamentals of Islamic Law at Damghan Branch, Islamic Azad University. ajalili1396@gmail.com

²Ph.D., Assistant Professor of Jurisprudence and the Fundamentals of Islamic Law at Damghan Branch, Islamic Azad University (Corresponding Author). dadashnejaddavood@yahoo.com

³Ph.D., Assistant Professor of Jurisprudence and the Fundamentals of Islamic Law at Damghan Branch, Islamic Azad University. mortezabarati@gmail.ir

Abstract

All the society members are obliged to exercise care in treating one another, and they should observe personal and public healthcare practices at the time of the outbreak of the contagious disease so that they cannot be transferred to others. The study is descriptive-analytical research done through the use of library documents for investigating the jurisprudential and legal verdicts about the non-observation of the healthcare practices in the face of the newly emerging diseases as well as the legal mandates that can be applied for holding liable a person who causes the transferring of the diseases to others by not observing the healthcare practices. The non-observance of the personal and public healthcare practices during the outbreaks of the newly emerging diseases is forbidden based on such jurisprudential regulations as “the necessity of repelling contingent losses,” “necessity of lives’ protection,” and “denial of loss.” Moreover, the person who transfers the newly emerging contagious diseases should be held liable based on such rules as “necessity of repelling loss,” “necessity of lives’ protection,” “prevention of wastage,” “causation liabilities,” “veneration of human beings and other animals’ lives,” “denial of loss,” “commitment to safety” and “commitment to the exercising of due common care.” Although the person transferring the disease cannot be retaliated even in case of the receiving person’s death for such a reason as the absence of such conditions as complicity and action’s lethality dominance, these conditions have been subjected to more criticism herein. Based on the enquiries from the great exegetes, the transferring of Corona Virus to another person for such a reason as the non-observance of healthcare standards brings about liability, and the person should make compensations in case s/he is found not observing the healthcare regulations.

Keywords: personal and public healthcare, contagious diseases, Corona Virus, mandate, jurisprudential and legal basics

INTRODUCTION

Disregarding gender, age, race, nationality, religion and so forth, hygiene and healthcare are the first and the most important human rights to which every individual is entitled. In penal jurisprudence, healthiness and vitality are of the same importance as the other rights or, better said, governing them. Islam has authenticated the healthiness right based on such a concept as the necessity of preserving healthiness. The healthiness right falls within the welfare rights, and it is inseparably and undeniably associated with other human rights in such a way that the actualization of a great many of the human rights is suspended over the enjoyment of this evidently sure human

right. It has been stated that healthiness is a rank in Islam falling in the second position after faith and belief in God and the great prophet of Islam, his highness Muhammad Mustafa (may Allah bestow him and his sacred progeny the best of His regards), has the following order in this regard: “after the gift of the belief in the most compassionate and most merciful God and having faith in Him, there is no other gift equal in value and price to healthiness” (Eydi and Ketabi Rudi, 2014, p.103). In regard to the hefty importance and lofty rank of healthiness, Imam Ali (PBUH) orders that “*Al-Sehha Afzal Al-Ne’am*,” meaning “healthiness is the best of the gifts” (Qerar Al-Hekam, 2016, hadith: 1050).

Elsewhere, His Highness Imam Ali (may Allah hail on him) commands: “*Davâm Al-Âfiyah Ahonâ Atiyeh Wa Afzal Qesm,*” meaning “constant and stable healthiness for the human beings is amongst the most pleasant gifts and the highest divine destiny” (Ibid, p.253). The issue is important to the extent that his highness Imam Ali (PBUH) realizes that the real flavor of life can be tasted in the light of healthiness and haleness and orders that “*Bi Al-Âfiyah Tûjad Lezzah Al-Hayât,*” meaning that “it is only in healthiness and heartiness that the human beings can taste the (real) pleasure of life” (Ibid). The utmost saying about the haleness and healthiness can be read in precious words in an interpretation of the word “Al-Hasanah” articulated through the blessed tongue of the great prophet of Islam (may Allah bestow him and his sacred progeny the best of His regards) as follows: “the term ‘*Hasanah*’ in the honorable *Âya ‘Rabbanâ Âtenâ Fi Al-Donyâ Hasanah Wa Fi Al-Âkherah Hasanah ...*” meaning “O’ God, provide us with heartiness and healthiness in this world and mercifulness and divine grace in the other world ...”; there is also another saying with the same meaning; it reads: “*Wa Al-Hasanah Fi Al-Donyâ, Al-Sehha Wa Al-Âfiyah Wa Fi Al-Âkherah, Al-Maqferah Wa Al-Rahmah*” (Bihar Al-Anwar, v.81, p.174).

Essentially, Islam’s strict instructions about cleanliness and hygiene as well as about nutrition and its verdicts on “edibles and drinkables” and the stimulations caused by some foodstuff are in the same line with the protection of health. In between, supporting the individual’s healthiness following their infliction with diseases for which a cure is to be yet discovered as well as the newly emerging ailments gains twice as much importance. Thus, the health right not only falls in the group of the individuals’ natural light but has also been authenticated as a legal right based on the national and international regulations. The observance of the personal and public healthcare standards is a fundamental and essential issue that not only can have a direct relationship with faith according to the legal and jurisprudential foundations and commands by the immaculate Imams (may Allah hail on them) and divine guardians as underlined in a well-known saying from the great prophet (may Allah

bestow him and his sacred progeny the best of His regards), to wit “*Al-Nezâfah Min Al-Imân*” meaning “exercising hygiene procedures is a sign of faithfulness”, but it can also have the largest effect on the optimal protection and maintenance of the environment as the life ground and space; so, since the human beings’ healthcare performance and behavior and their contact with their life environment can pave the way for the infliction with or prevention of many of the diseases, exercising due healthcare can end in the construction of the most essential pillar of life, i.e. happiness, joyfulness and haleness, if it is done based on the religious and jurisprudential beliefs and in adherence to the divine human and animal rights and it can concomitantly cause the continuation of healthy births devoid of any physical and intellectual flaws; this is per se indicative of a wise saying: “the healthy intellect lives in a healthy body”. The outcome of this healthy mannerism and lifestyle is definitely healthy, joyful and creative individuals and the formation of sound families followed consequently by happy and healthy communities and favorable socio-economic productivity. Based on the statutory provisions and various legal-jurisprudential regulations like the necessity of repelling the contingent losses, the necessity of lives’ protection, no loss of any type is acceptable, causation, forbiddance of wastage, veneration of the Muslims and their workers’ properties, commitment to safety and commitment to common care, the present article deals with the duties of the individuals and the society for the observation of healthcare standards to the maximum extent of their abilities. In this way, the responsibility of every individual member of the society is elucidated, and the effects of these rules and regulations’ observance and the outcomes of the duties serving the prevention of the outbreak, treatment and control of different kinds of diseases, especially, the ailments that are still emerging within new formats and dimensions even with the progress made in sciences, genetics and technologies will be clarified; then, this sure Quranic principle that “... *Wa Man Ahyâhâ Fa Ka Annamâ Ahyâ Al-Nâs Jami’â ...*” meaning “he who revives it is envisioned as having just revived the entire people ...” (Honorable SÛRAH MÂ’IDA, ÂYA: 32) will be found

actualized. In the meanwhile, the society and the individuals will be maximally prevented from incurring economic losses. The thing that is of great importance in this article is the accomplishment of the following objectives:

- 1) Investigation of the jurisprudential-legal foundations indicating the necessity of the personal and public healthcare standards' observance
- 2) Investigation of the jurisprudential and legal crimes in the area of the personal and public healthcare in relation to the prevention of the social and economic losses

Conceptualization:

Healthcare: healthcare means doing preventive activities such as doing or not doing preventive actions parallel to the protection or enhancement of mankind's health. Healthcare can be divided into two sorts personal and public. By personal healthcare or hygiene, the self-care activities in the form of doing or not doing actions related to the body and personal objects' cleanliness in line with the protection of healthiness are intended; and, by public healthcare, other-care activities in the form of doing or not doing of actions related to the cleanliness of the public environment and objects parallel to the protection or enhancement of all the society members' hygiene and sanitation are intended (Hatami et al., 2013, v.1, p.1).

Contagious Diseases: these are ailments originating from a given pathogenic factor or infectious byproduct and transferred directly or indirectly by infected human beings, animals, plants, objects and so forth and spread rapidly in the society (Fuladband, 2012, pp.8-9). These diseases are divided into two kinds of lethal like tuberculosis, cholera, AIDs, Ebola, MERS, Corona etc. and nonlethal like herpes simplex and oral candidiasis (Forughi, 2015, p.127).

Mandate: Ayatollah Meshkini (may Allah sanctify the sacred soil of his tomb) commonly defines mandate in the book "Mostalehât Al-Fiqh" in the following words: "mandate is a relational commitment that proves obligation and liability from the perspective of the norms

and the intellect, and it does not differ if it is an externally objective obligation or a generally objective obligation (Meshkini, 2013, p.371).

Corona Virus: Covid19 is an infectious disease created by a newly discovered virus. Most of the individuals inflicted with Corona Virus experience mild to medium respiration shortages (WHO, 2020). The virus was discovered in December 2019 in Wuhan, China, and was gradually transferred to the whole world and became a major concern of today's communities. In comparison to the previously identified viruses, Corona Virus features a higher transferability and a more difficult treatment (Taheri, 2020, p.89, with some changes).

Study Method:

The present study is descriptive-analytical research. The study data have been collected through the investigation of ÂYÂT and narrations, jurisprudential regulations, constitution and Islamic penal code of law, as well as credible books and Shiites' sources, prior research and inquiries from the great exegetes.

The Relationship between Attribution and Nature in the Contagious Diseases:

Attribution is the relationship between the actions and their consequences. This attribution relationship has to be necessarily found established so that the result can be vividly attributed to the result-constrained perpetration of a crime (Mirza'ei and Sadeghi, 2020, p.171). Based on an analysis of the jurisprudents' notions, the thing that has to be taken into account as a common point to be necessarily proved for the imposition of situational liability is the verification and justification of the attribution, in its general sense, and causality, in its special sense. The legislator, as well, has underlined the necessity of verifying and proving attribution. Article 529 of the Islamic penal code of law, passed in 2013, stipulates in this regard that "in all of the cases that guilt causes civil or criminal liability, the court is obliged to verify the attribution of an action's result to the perpetrator's guilt." Moreover, based on Article 526 of the Islamic penal code of law, "whenever two or several factors are found having influenced the perpetration of a crime, some by the cause of complicity and some by

the force of causation, the factor to which the crime is attributed should be held liable.” Article 492 of the Islamic penal code of law, as well, stipulates that “a crime can be sentenced to retaliation or atonement when its result can be attributed to the perpetrator’s behavior whether through complicity or via causation or both.” Corresponding to article 493 of the Islamic penal code of law, “the existence of a temporal distance between the perpetrator’s behavior and the result does not bar the crime attribution such as the death caused by the transferring of lethal pathogens that can be sentenced to retaliation or atonement in a case-specific manner. The verdicts of this article and article 492 of the Islamic penal code of law hold true for all of the crimes. Based on article 500, “in cases that a crime or any other sort of harm cannot be attributed to a person’s behavior such as when damages are caused by force majeure, the liability is revoked.” Article 531, as well, expresses that “in cases of collision, when the accident can be attributed to a side, but his or her movement is found so weak that no effect can be attributed thereto, the liability goes to the side to whom the collision can be attributed.”

The situational verdicts on mandate or guarantee or liability, including lex, tantalyze, and atonement, revolve about the accuracy of the crime attribution, as also explicitly stated by a great many of the jurists. The notable point is the method with which the attribution is verified; so, only the actions and factors that have had an effect on the result should be taken into consideration in terms of attribution; this is more of a cause-and-effect relationship nature. In fact, as a description of the factors involved in the occurrence of a thing, the effects are distinctive features enabling the recognition and elucidation of the factors to which effects can be attributed, and this has been highlighted in article 526 of the Islamic penal code of law as stated in the following words: “whenever two or several factors are found having influenced the occurrence of a crime some by complicity and some by causation, the factor to which the crime can be attributed should be held liable and in case that the crime can be attributed to all of the factors, they are all equally liable unless the perpetrators’ behaviors are found having different effects in which case each

factor is held liable to the extent of his or her behavior’s effect. In case the accomplice of a crime is found to have had no choice, ignorant, not fully grown minor or insane and/or other kinds of the like, the cause should be solely held liable (Parvizifard, 2017, p.14).

Prohibition of Public Healthcare Non-Observation in the Face of Contagious Diseases:

All the society members are obliged to observe the healthcare standards in the face of contagious diseases like Corona so that they can prevent their own and others’ infliction with such ailments and harms. The individuals inflicted with such diseases should be exercising intensive care so as to prevent the infliction of the others, especially those who are in close relationship with them and are at risk of infliction. Jurists, including Ayatollah Makarem Shirazi (2008, p.99), have decreed that individuals with HIV AIDs, like a contagious disease, should not marry others in case of the risk generation. Furthermore, Ayatollah Montazeri (2007, p.112) has opined that the individual with HIV AIDs should not perform an action in his or her marriage that causes transferring of the disease to the spouse. The present study’s authors have recently inquired about their religious role models about non-observation of the healthcare protocols on the prevention of the transmission and passing of Corona Virus, and the followings are some of their responses:

Question: what is your idea about the individuals who cause the spread and transferring of the pathogenic agents, including the dangerous Corona Virus, to the others through not observing the regulations and protocols declared by the officials and resultantly cause life and financial losses to the others?

Ayatollah Sistani’s response: it is not permissible for persons with contagious diseases to mix with the others, and in case of appearing in a group of people who do not know anything about his or her situation, s/he should be held liable for their related losses, and if a person dies for the same reason, the

transmission of the disease, s/he has to pay atonement¹.

Ayatollah Makarem Shirazi's response: if a person falls short of observing the healthcare protocols on the prevention of contagious diseases and causes the transferring of the disease to a person, s/he should be held liable, and s/he has to make compensation².

Ayatollah Alavi Gorgani's response: it is necessary for everyone to observe the regulations and instructions offered by the physicians, and it is recommended that they should not be neglected. There are many proofs implying the forbiddance of healthcare protocols' non-observation in the face of contagious diseases, especially AIDs and/or, presently, Corona Virus. Some of the most important of these instructions will be presented below³.

A) The Axiom "Necessity of Repelling the Contingent Loss":

The axiom "the necessity of repelling the contingent losses" is amongst the credible jurisprudential regulations with the following content: "a person should avoid anything that is likely to cause him, or her sustain losses of the worldly or otherworldly losses" (Mostafavi, 1997, p.306).

For the justification of this axiom, many proofs have been presented, such as the "expediencies of the loss's primary cause" (Ibid, p.307) "rule of intellect" (Mojahed, 1995, p.487; Khorasani, 1989, p. 308; Mostafavi, 1997, p.307 and Hashemi, 2016), "intellectuals' way of conduct" (Hashemi, 2016, p.49) and so forth.

In this axiom, loss includes those imposed on one's own self and others. The losses are likely to be incurred by others when a person hides his or her contagious disease. The likelihood is far higher and stronger in regard of Corona Virus because it causes huge damage and even mortality. Based thereon, all the society members should observe healthcare and hygiene protocols so that the possible losses, including life and financial losses, could be repelled; hence a violation of healthcare instructions is forbidden.

B) Axiom "Necessity of Life protection":

The axiom "necessity of life protection" is amongst the well-known jurisprudential regulations used in many of the jurisprudential and legal discussions. Based on this axiom, one should try to protect his or her life (Maghaminia, 2018, p.409).

There are many reasons justifying the foresaid axiom, including the followings: honorable ÂYA "*Lâ Tolqû Bi Aydikom Elâ Al-Tahloka*" (BAQARAH, ÂYA: 195) meaning "do not expose your own selves by your own hand to perishing", ÂYA "*Lâ Taqtolû Anfosakom*" (NISÂ'A, ÂYA: 30) meaning "do not kill yourself", the hadith "*Enna Al-Mo'men Yobtali Bi Kolle Baliyyah Wa Yamût Bi Kolle Maytah Ellâ Ennahû Lâ Yaqtol Nafсахû*" by Imam Muhammad Bagher (PBUH) (Kolayni, 1987, v.2, p.254) meaning "verily, the believers are tested by all the possible disasters and die by all sorts of deaths but they never commit suicide"; hadith "*Man Qatala Nafсахû Mota'ammedan Fa Howa Fi Nâr Jahannam Khâledan Fihâ*" by Imam Sadeq (PBUH) (Kolayni, 1987, v.7, p.45) meaning "he who kills himself intentionally would find himself in the innermost fires of hell forever"; intellect (Soltani and Karachian, 2013, p.104); intellectuals' way of conduct; consensus (Ibid), axiom "repelling of the loss for its incorporation of the self-loss" (Ansari, 1994, pp.115-116); axiom of veneration (Hushmand, 2017, p.100); axiom "necessity of repelling the contingent losses (Mosafavi, 1997, p.306), axiom "veneration of the self" (Ansari, 1994, pp.115-116 and Imam Khomeini, 2001, v.2, p.112) and maxim "forbiddance of suicide" (Shafi'ei, 2010, p.42).

Contagious diseases like Covid19 threaten the lives of society members (Hong, 2019, pp.2-3), and human beings should observe healthcare and safety issues to protect their lives.

C) Axiom "Forbiddance of Wastage":

The axiom "forbiddance of wastage" is reminded by such an expression as "*Man Atlafa Mâl Al-Qair Belâ Ezn Fa Howa Lahû Zâmen*" meaning "he who wastes another person's properties without his or her permission should be held liable for the compensation thereof" is amongst the

necessities of Islam (Bojnurdi, 1999, v.2, p.25); it is one of the well-known jurisprudential regulations used by the jurists for the issue of guarantees and mandates (Mirzay-e-Ghomi, 2009, v.3, p.113 and Bojnurdi, 1981, v.1, p.3).

The term “Etlâf” is an infinitive from the root “Talâf” in Arabic; it literally means destruction, invalidation, perishing and so on (Fayyûmi, 1985, p.76 Jowhari, 2008, p.129). In jurisprudential terms, it means wastage of a property or interest or profit belonging to another person. Besides having performed a sin, the wasting person is liable for the compensation of the wasted property or benefit; therefore, s/he has to pay an equivalent price of the wasted thing (Makarem Shirazi, 1991, v.2, p.193).

Wastage can take place by complicity or by other means in both cases of which the wasting person is held liable and s/he has to make compensation. Thus, some like Imam Khomeini (2000, v.2, p.190), Sayyed Abd Al-Fattâh Marâghi (2005, v.2, p.435) and Sayyed Mohammad Bojnurdi (1981, v.1, p.12) have related the axiom of wastage prohibition to the axiom of causation.

The reference for the recognition of the wastage's limits as for many of the other jurisprudential and legal issues is the norms that vary based on the conditions and temporal and spatial expediencies.

In this axiom, wastage is not exclusively specific to properties and it can also encompass lives and body parts, as well. Therefore, jurists have resorted to this axiom for atonement (Tusi, 2008, v.7, p.187), retaliation (*lex talionis*) (Saywari, 1984, v.4, p.450 and Moghaddas, 1983, v.14, p.53) and the liability of a guilty physician (Helli, 1988, v.4, p.232 and Najafi, 1984, v.43, p.44). The infliction with contagious disease, especially Corona Virus, causes the wastage of human beings' properties and even lives (Hong, 2019, pp.2-3) and the person who does not observe healthcare standards in regard of this disease and wastes the others' lives and properties should be held liable.

D) Axiom of Causation:

The axiom of causation or wastage by causation and/or accomplice as the stronger cause (Irvani, 2011, v.2, p.160) and/or the

main cause's impelling by the accomplice (Khansari, 1985, v.6, p.158) is amongst the jurisprudential regulations denied by some like Muhammad Hasan Najafi (Najafi, 1984, v.37, pp.50-52) and referred to axiom of wastage by others like Imam Khomeini (may Allah sanctify the sacred soil of his honorable tomb) (2000, v.2, p.190), Sayyed Abd Al-Fattâh Marâghi (2005, v.2, p.435) and Sayyed Mohammad Bojnurdi (1981, v.1, p.12); some others like Sayyed Mohammad Bagher Sadr (2012, v.4, p.319) have accepted it as an independent jurisprudential axiom by stating that there are causation and complicity in wastage and they can be divided into two kinds of “preliminary complicity” such as mutilation and “intermediated complicity” such as injuries resulting in body organs' removal; however, in causation, there are conditions and grounds acting as the cause like digging a well (Âmeli, no date, v.11, pp.127-128 and Makarem Shirazi, 1991, v.2, p.181). If the causation is considered as an axiom independent from the axiom of wastage, it can be enumerated amongst the independent proofs of liability. For the same reason, the axiom has been expressed independently.

By the axiom “causation,” it is intended that if a wise person willfully performs an action out of free will that is deemed habitually causing wastage of another person's properties, life and interests and benefits with no other willful and wise agent being found intermediating between the action and the wastage, the former is to be held liable for the compensation of losses (Bojnurdi, 1999, p.38 and Katouziyan, 2007, p.159). By the action herein, we mean the doing of action or leaving it undone (Rashti, no date, p.29).

Iran's Islamic penal code of law, approved in 2013, has also defined “causation”; it is stipulated in article 506 that “causation in a crime perpetration means a person's causing of the wastage or injury of another but in an indirect manner in such a way that the crime could not have happened if the person had not exhibited a specific type of behavior such as when a person digs a well and another person happens to fall in and sustain injuries.”

In the axiom of “wastage,” liability is not drawn on guilt; however, in the axiom of “causation,” it is suspended on the justification of the guilt (Roshan and Sadeghi, 2011, p.105).

The scale in the identification of guilt is the norms (Badini, 2010, p.79) and norms realize the non-observance of the sanitary and hygiene and healthcare interventions when encountering contagious diseases, including the hiding of one's infliction with a contagious disease, as the guilt of a sort (Yazdanian, 2012, p.43).

The person who falls short of observing the healthcare standards in the face of contagious diseases like Covid19 (such as wearing the mask, keeping social distances and regular washing of the hands and face and use of antiseptics) and hides the infliction with a contagious disease is not involved in another person's sustaining of loss through complicity but s/he has caused losses and, according to the axiom of causation, s/he is liable to compensate the losses.

E) Axiom of Veneration:

The axiom of veneration is amongst the well-known jurisprudential regulations by which many jurists have proved injunctive verdicts as well as situational verdicts like civil liability (Hushmand, 2017, p.100).

Based on this axiom, the person who wastes the life, property, action and interests of another person is to be held liable (Ibid and Hakimian, 2012, p.40). the person who violates the healthcare standards during the outbreak of contagious diseases like Covid19 and causes the infliction of another person with the disease and imposes life and financial losses to him or her (Hong, 2019, pp.2-3) should be held liable.

F) Axiom "Denial of Loss":

The axiom of "denial of loss" is amongst the famous jurisprudential regulations that, besides the injunctive verdicts on the forbiddance of loss imposition, prove the situational verdicts, including the civil liability and responsibility (Valizadeh, 2019, p.333). As it was mentioned, the necessity of repelling and prohibiting loss can be extracted from this axiom and, based on the axiom "repelling of the loss," the imposition of loss on the others is both forbidden and the cause of liability for the compensation of others' losses. Therefore, it can be enumerated amongst the proofs of liability and mandate.

The individual who falls short of observing the healthcare standards in the face of contagious

diseases like Covid19 sets the ground for the others' infliction with this disease and the subsequent harms and damages, including death (Hong, 2019, pp.2-3). hence, based on the axiom "denial of loss," such a person is to be held liable for the losses s/he has caused to another person.

G) Axiom "Commitment to Safety":

The axiom "commitment to safety" is amongst the legal regulations invented in France's legal system for ruling the contracts; then, the other legal systems like those of Germany and Iran accepted it (Thaqafi et al., 2017, p.2). The axiom was subsequently generalized to the legal events because the preservation of safety is necessary beyond the contracts and in the legal incidents, as well.

For safety here, the very norm-based perception is intended that includes "the situation in which a person, his or her properties and his or her interests are kept away from risks and dangers" (Khoshnudi, 2013, p.29). By "commitment to safety," as well, the intention is a legal commitment drawn on the natural obligation for the veneration and non-harming of the other human beings' physical integrity. Accordingly, the axiom can be referred to as the jurisprudential axiom of veneration.

Human beings' safety is among the natural and most preliminary human rights authenticated in all the civilizations, religions and legal systems, so it is all-inclusive (Thaqafi et al., 2017, p.20). Thus, "commitment to safety" is a particular right belonging to all human beings. The third article of the international human rights declaration, passed in 1948, stipulates that "everybody has the right of life, freedom and personal safety and security." Acts 22 and 42 of the Islamic Republic of Iran's constitution, as well, have underlined the safety and security rights.

Paragraph C in the fifth article of the Islamic Republic of Iran's biological safety law, enacted in 2009, and article 13 of the procedures on the medical equipment and requirements, passed in 2015, have taken the "commitment to safety" into account. The protection of the society members' safety and avoidance of damaging the others' health and hygiene are deemed as the general duty of every individual member of the people groups in the judicial procedures.

H) Axiom “Commitment to the Normal Care”:

The axiom “commitment to the normal care” is amongst the legal regulations based on which every person should behave commonly and normally, and a person is held liable in the case that non-observation of common care ends in damage to the others. The practicing of common care is not the duty of all the people. Rather it has been placed at the side of such an element as the predictable harm; so, a person can be convicted to the desertion of such a duty when the issue is predictable damage to the others. Thus, some have realized that exercising due care is a duty incorporating warning to the others or elimination of every sort of predictable danger of which the individual should be or is aware. Therefore, a patient with a dangerous disease and with others exposed to the infliction by his or her ailment is obliged to exercise common and due care so as to protect the others and the predictable victims away from that danger. Some others justify the patients’ commitment to the protection of others’ health and prevention of damage to them based on the axiom “denial of loss” (Abbasi, no date, p.11). Based thereon, this axiom refers to the jurisprudential axiom of “loss denial.”

Every member of the society should be practicing due care at the time of the contagious diseases outbreak, particularly Covid19, through the observation of the healthcare standards and, in case of infliction, s/he should not conceal his or her disease so that the others might be prevented from the infliction with the disease and sustaining losses.

Punishment for the Spreading of Contagious Diseases by Not Observing the Healthcare and Hygiene Standards:

In jurisprudence, no punishment has been set for the non-observation of healthcare standards in the face of the contagious diseases but, if attention is paid to such other titles as disorder, corruption and/or death causers in the society, there are specific punishments determined. In the laws, certain punishments have been considered for the non-observation of healthcare and hygiene procedures. Article 688 of the Islamic penal code of law, passed in

1996, stipulates that “it is forbidden to make any intervention recognized as a threat to the public healthcare such as contamination of drinkable water or distribution of contaminated water, unsanitary dumping of the human and animal feces and residues, pouring of toxic materials into the rivers, leaving garbage in the streets and unauthorized livestock slaughtering, unpermitted use of crude wastewater or sewage treatment plants’ effluents for agricultural consumption and the perpetrators would be sentenced to incarceration for up to one year if not sentenced to more severe punishments based on certain other regulations”. Article 145 of the Islamic penal code of law, passed in 2013, stipulates that “guilt might include carelessness and imprudence”. Compromise, negligence, non-versatility and non-observance of the governmental and other procedures are viewed as examples of carelessness or imprudence in a case-specific manner”.

If the individuals with contagious diseases hide it from the others, they are not to be sentenced to a given punishment in case of causing the spread of the contagious disease to others hence their death but they should pay atonement even if they are found having done no other faulty action (Yazdanian and Thaghafi, 2014, p.47). And, in case of their own death, the atonement is paid from their heirloom and the properties they leave behind; in case they are found having intended disorder and corruption, they are sentenced to these crimes’ specific punishments. Jurisprudents, including Ayatollah Makarem Shirazi (2008, p.230) have decreed that whenever the individual transfers a contagious disease to cause the death of another person, the atonement should be paid for the death of the person who has received the disease from the properties of the person transferring the disease and/or, based on their responses to the enquiries, such a transferring person is liable to the compensation in case of refraining from paying the atonement on the condition that the disease’s spread is absolutely attributed to him or her. Although some (Yazdanian and Thaghafi, 2014, p.47) have stated that the contagious diseases’ spreading is a sort of imposing loss on the others and the victim does not need for all of such a disease’s damages to

be appear as symptoms in him or her so as to subsequently file a lawsuit; however, it appears that liability and punishment are annulled as far as no loss has been imposed on the receiver of the contagious disease's virus because there is also possible for the disease to be spread without causing of any loss.

Article 9 of the law on the "method of preventing the sexually and contagiously transmitted diseases," passed in 1941, stipulates that "a person aware of his or her infliction with a disease that can be sexually transmitted and/or capable of making guesses based on his or her personal states that the disease is contagious and engages in sexual intercourse that causes another to be inflicted with the same disease would be sentenced to correctional imprisonment for a period no more than one year upon the latter's filing of a lawsuit to judicial authorities."

The verdict is more accentuated and more intense about the set of the contagious diseases like Covid19 that can be more easily transferred (Hong, 2019, pp.2-3) with a higher degree of damage and lethality (Ibid).

"Lex talionis" or retaliation of the persons transmitting contagious diseases by not observing the healthcare standards is rescinded here in case of the death of the receptors of the disease because if the former knows or makes intellectual guesses that his or her presence in the group of the others may cause their sustaining of losses or mortality and/or intentionally intends to transfer the disease and cause the others' death and they also happen to be inflicted and die, it has to be envisioned as an example of intentional murder; that is because complicity is a necessary condition for retaliation as opined by some jurisprudents (Parvizi and Ramezani, 2017, p.10) and it also seems to be faulty. In addition, as stated by a majority of the jurisprudents (Tusi, 2008, v.3, p.582 and Âmeli, 1990, p.267), the dominant lethality of the action is the necessary condition in the intentional murder, whereas contagious diseases like Covid19 mostly kill elderly people, patients with comorbidity and pregnant women (Hong, 2019, p.2); about 3% of the patients with some of the contagious diseases die after all. Based thereon and according to the axiom of "carefulness in shedding blood" (Kalantari et al, 2016, p.131) and axiom of "punishment refutation in dubious cases" and their original usability for

retaliation corresponding to some jurists' sayings (Helli, 1988, v.4, p.206), the persons transmitting contagious diseases cannot be retaliated and the sole paying of atonement suffices; if they also happen to die, atonement should be withdrawn from whatever the thing they have left behind.

Article 290 of the Islamic penal code of law, approved in 2013, as well, explicitly stipulates the criminal intention of the perpetrator and the lethality of his or her action as the precondition for retaliation. If a person with a contagious disease is found having had a prior intention of transmitting his or her disease to a certain person but not wishing his or her death and/or if s/he is found faultlessly transmitting the disease or having no knowledge about the diseases' contagiousness, the case is deemed as pseudo-murder for which retaliation cannot be implemented as articulated by some jurisprudents (Halabi, 1997, p.408; Helli, 1993, v.3, p.582 and Najafi, 1984, v.42, p.19). In case that the person with the contagious disease is found intending neither the transmission of the disease nor the killing of the receptor, it would be a pure mistaken murder case wherein retaliation is also refused based on the notions of jurisprudents (Halabi, Ibid; Helli, 1993, v.3, p.582 and Najafi, 1984, v.42, p.105).

Conclusion:

The present study aimed at investigation of legal-jurisprudential basics and legal mandates of personal and public hygiene and healthcare non-observation with an approach to the newly emerging contagious diseases. At present, the largest challenge in the human community is the recently emerged Covid19 that, since its emergence in December, 2019, in Wuhan, China, has been spread to 250 million persons and has killed more than 4.5 million individuals during one and a half years. It has also imposed human and economic damages and affected the social relations; thus, all of the society members should be accordingly paying serious attentions to such diseases and observe the standards of personal and public healthcare, hygiene and sanitation. The violators of hygiene procedures are held liable in case of the disease's transmission to other persons based on such axioms as necessity of repelling the contingent losses, necessity of lives' protection, prevention of wastage,

causation, veneration, commitment to safety and commitment to normal care as well as the Islamic penal code of laws and other statutory provisions and, also, the responses to the enquiries from the great religious role-models and exegetes. Although retaliation is revoked in intentional murder cases in this regard for such a reason as the absence of such preconditions as complicity and dominant lethal action which are otherwise deemed necessary by most of the jurists for the retaliation of intentional murder cases. Retaliation is generally, including in the present study's case, cancelled for pseudo-murder and purely mistaken murder cases.

Based thereon, the main pillar of liability actualization is the accurateness of the attribution which has to be necessarily verified for all of the crimes, including intentional or unintentional and with and without default; the contagious diseases are also no exception to this rule. Although the transmission of the virus takes place by invisible and visible and microscopic means, the method of verifying the criminal liability in cases of contagious diseases transmission and attributable crimes features apparent means, effects and results and it is by the verification of these invisible results and effects and their attribution to the person transmitting the contagious disease that the preconditions are considered all actualized hence such a person's liability cannot be doubted. The notable point is the difficulty of attributing the invisible results and effects to the disease transmitter. In the meanwhile, other typical properties of the contagious diseases, including the temporal distance between the action and the criminal result, the individual's informed consent for acquiring the disease and/or giving up to the action that causes the transmission of the virus and the possibility of the natural or unnatural events decisively pinpointing the attribution might double the difficulty of the attribution's verification. Corresponding to the enquiries from the great religious role-models, as well, a person causing the infliction of others with Corona Virus or other contagious diseases by not observing the healthcare regulations has to be held liable and s/he has to compensate the financial and life losses, if any.

REFERENCE

- Holy Quran
- Ansari, Mortaza, (1994), "Fawâ'ed Al-Osûl", v.2, Qom, Majma'a Al-Fikr Al-Eslâmi
- Irvani, Bagher, (2011), "Dorûs Tamhidiyeh Fi Al-Qawâ'ed Al-Fiqhiyyeh", v.2, Qom, Dar Al-Fiqh
- Âmedi, Abu Al-Fat-h, (2016), "Qerar Al-Hekam Wa Dorar Al-Kelam", tr. Mohammad Ali Ansari, Qom, Imam Asr (may Allah hasten his honorable reappearance)
- Badini, Hasan, (2010), "a critical approach to the scale of normal and intellectual human being for the recognition of fault in civil liabilities", journal of law, no.40
- Bojnurdi, Sayyed Mohammad Hasan, (1981), "Jurisprudential Regulations", v.1, 3rd ed., Tehran, Oruj
- Bojnurdi, Sayyed Mohammad Hasan, (1999), "jurisprudential regulations", v.2, Qom, A-Hadi (PBUH) Publication Institute
- Parvizifard, Ayatollah and Ramezani, Bijan, (2017), "legal and jurisprudential elaboration and interpretation of the diseases and contagious damages", journal of political, legal and jurisprudential sciences studies, no.4
- Thaghafi, Maryam; Yazdani, Ali Reza and Jalali, Mohammad, (2017), "the nature of commitment to safety and its application to the civil liability of physicians in the laws of Iran and France", journal of comparative law studies, no.97
- Jowhari, Ismail, (2008), "Mo'jam Al-Sahâh", 3rd ed., Beirut, Dar Al-Ma'arefah
- Hatami, Hussein; Parizadeh, Sayyed Mohammad Javad; Razavi, Sayyed Mansur; Eftekhari Ardabili, Hasan; Majlesi, Fereshteh and Sayyed Nozadi, Mohsen, (2013), "the comprehensive book of public healthcare", v.1, Tehran, Arjomand
- Hakimian, Ali Mohammad, (), "axiom of veneration, a foundation for the Muslims' civil responsibility for one another", Islamic laws, 9(33)

- Halabi, Ibn Zohreh, (1997), "Qaniyyeh Al-Nozu'e Elâ Elmi Al-Osûl wa Al-Forû'e", Qom, Imam Sadeq (PBUH) Institute
- Helli, Ja'afar, (1988), "Sharaye'e Al-Islam", v.4, 2nd ed., Qom, Esma'eilian
- Helli, Hasan Ibn Yousef, (1993), "Mokhtalaf Al-Shi'ah Fi Ahkam Al-Shari'ah", Qom, Islamic publication office
- Khoshnudi, Reza, (2013), "comparative study of commitment to safety in Iran and France's laws", journal of comparative law studies, no.79
- Imam Khomeini, Sayyed Ruhollah, (1995), "Tahrir Al-Wasileh", tr. Sayyed Mohammad Bagher Musavi Hamadani, v.4, Qom, Dar Al-Elm
- Khansari, Sayyed Ahmad, (1985), "Jâme'e Al-Madarek", v.6, 2nd ed., Qom, Esma'eilian
- Rashti, Habibollah, (no date), "Kitâb Al-Qasb", 1st ed., anonymous
- Roshan, Mohammad and Sadeghi, Mohammad, (2011), "liabilities stemming from the sexually transmitted diseases", journal of medical jurisprudence, no.7
- UN, (1948), "the international human rights declaration"
- Saywari, Meghdad, (1994), "Al-Tanqih Al-Râ'e'e", Qom, Ayatollah Mar'ashi Library
- Shafi'ei, Mohammad, (2010), "Alâm", 1st ed., Cairo, Kolliât Al-Azhariyyeh
- Sadr, Sayyed Mohammad Bagher, (2010), "Bohûth Fi Elm Al-Osûl", v.4, Qom, Islamic jurisprudence encyclopedia
- Taheri, Sara, (2020), "a review of Corona Virus-induced diseases (Covid19) and what has been recognized about it", journal of health image
- Tusi, Mohammad, (2008), "Al-Mabsût", v.3, Tehran, Maktabah Al-Mortazaviyyeh
- Âmeli, Sayyed Javad, (no date), "Meftâh Al-Kerâmah", v.11, 1st ed., Beirut, Dar Al-Ehyâ'a Al-Torâth Al-Arabi
- Ameli, Sayyed Mohammad, (1990), "Madârek Al-Ahkâm", Qom, Âl Al-Bayt (may Allah hail on them)
- Abbasi, Mahmoud, (no date), "the comprehensive book of public healthcare, healthcare rights and modern challenges of medical biology", 1st ed., Tehran, Shahid Beheshti University of Medical Sciences
- Abdi, Yasin and Ketabi Rudi, Ahmad, (2014), "the position of the healthiness international laws", seasonal journal of social security, no.44
- Foroughi, Fazlollah, (2015), "method of verifying the criminal liability for the contagious diseases and ascribable crimes", journal of medical laws, no.35
- Fuladband, Farahnaz, (2012), "contagious diseases", Shiraz, Medical Sciences University
- Fayyûmi, Ahmad, (1985), "Al-Misbâh Al-Monir", Qom, Dar Al-Hegrah
- Katouziyan, Naser, (2006), "extra-contractual requirements: civil liabilities", 8th ed., Tehran, Tehran Press
- Kalantari, Abbas; Motavvalizadeh, Nafiseh and Golestanru, Seddigheh, (2016), "carefulness in shedding blood and its application to the criminal laws", journal of islamic laws, no.51
- Kolayni, Mohammad, (2008), "Al-Kâfi", v.2, 4th ed., Tehran, Dar Al-Kotob Al-Eslamiyyeh
- Judicial and legal commission of Islamic Consultative Assembly, (1996 and 2013), "islamic penal code of laws; amendment of the islamic pena laws"
- Mojahed, Sayyed Mohammad, (1995), "Mafâtih Al-Osûl", 1st ed., Qom, Âl-e-Bayt (may Allah hail on them)
- Majlesi, Mohammad Bagher, (no date), "Bihar Al-Anwar", v.81, Qom, Dar Al-Kitâb Al-Eslâmiyyeh
- Council of experts, (1979), "Islamic Republic of Iran's constitution"
- Islamic Consultative Assembly, (2009), "Islamic Republic of Iran's biological safety"
- Islamic Consultative Assembly, (1941), "the law on the method of

- preventing the contagious and sexually transmitted diseases”
- Islamic Consultative Assembly, (1996), “Islamic penal code of law”
 - Maraghi, Sayyed Mir Abd Al-Fattah, (2005), “Al-Anâvin”, v.2, 2nd ed., Qom, Islamic Publication Office
 - Meshkini, Ali, (2013), “Mostalehât Al-Fiqh”, researched by Hamid Ahmadi Jolfa’ei, 1st ed., Qom, Dar Al-Hadith
 - Mostafavi, Sayyed Mohammad Kazem, (Al-Qawâ’ed”, 3rd ed., Qom, Islamic Publication Office
 - Maghaminia, Dariush, (2018), “jurisprudential foundations of civil liability with a glance at the axiom of no loss”, seasonal scientific-legal journal of Qanûnyâr”, 2(8)
 - Moghaddas, Ahmad, (1983), “Majma’a Al-Fâ’edeh Wa Al-Borhân”, v.14, Qom, Islamic Publication Office
 - Makarem Shirazi, Naser, (2008), “medical verdicts”, Qom, Imam Ali (PBUH) School
 - Makarem Shirazi, Naser, (1991), “Al-Qawâ’ed Al-Fiqhiyyeh”, v.2, 2nd ed., Qom, Imam Ali (PBUH) School
 - Montazeri, Hussein Ali, (2006), “medical verdicts”, Qom, Sayeh
 - Mirzay-e- Ghomi, Abu Al-Qasem, (2009), “Al-Qavânin Al-Mohkameh Fi Al-Osûl Al-Motqenah”, researched by Reza Hussein Sobh, v.3, Qom, Ehyâ’a Al-Kotob Al-Eslâmiyyeh
 - Mirza’ei, Mohammad and Sadeghi, Mohammad Hadi, (2019), “the nature of the attribution relationship and scale of its verification”, Islamic law and jurisprudence studies, fall and winter, 11(21)
 - Najafi, Muhammad Hasan, (1984), “Jawâher Al-Kalâm Fi Sharh Sharâye’e Al-Islam”, Qom, Dar Al-Kotob Al-Eslâmiyyeh
 - Ministry of healthcare, treatment and medical education, (2015), “procedures of medical equipment and requirements”
 - Valizadeh, Hussein, (2019), “the effect of the axiom ‘no loss’ on the civil liability and the role of the axiom ‘intervention’ in its repelling effect”, seasonal scientific-legal journal of Qanûnyâr, summer, 3(10)
 - Hashemi, Sayyed Mahmoud, (2003), “dictionary of jurisprudence”, 1st ed., Qom, Islamic Jurisprudence Encyclopedia Institution
 - Hushmand Firuzabadi, Hussein, (2017), “investigating the feasibility of extracting mandate from the narrative proofs of veneration”, journal of religion and law
 - Hong, Jung Wan, (2019), “general instructions for the prevention of infliction with Corona Virus (Covid19)”, Shanghai, Science and Technology Publication Institute of Shanghai
 - Yazdanian, Ali Reza, (2012), “proposing the civil liability of the teachers as a result of the students’ actions in the laws of Iran along with a comparison with the laws of France”, journal of civil law knowledge, no.1
 - Yazdanian, Ali Reza and Thaghafi, Maryam, (2014), “civil liability of the patients with contagious diseases”, civil jurisprudence teachings, University of Razavi Islamic Sciences, fall and winter, no.10
 - <https://www.who.int>
 - <https://www.sistani.org/persian/archive/26399/>
 - <https://makarem.ir/index.aspx?typeinfo=3002&lid=0&code=140005010101>
 - <http://site.agorgani.ir/panel/?tab=8>
 - https://makarem.ir/index.aspx?typeinfo=3002&lid=0&code=140005010101_0
 - <http://site.agorgani.ir/panel/?tab=8>
 - <https://www.sistani.org/persian/archive/26399/>