

مَجَلَّةُ الشَّرْعِ وَالْأَسْأَلِ الْإِسْلَامِيَّةِ

فصلية علمية محكمة تصدر عن مجلس النشر العلمي - جامعة الكويت

The State's Right to Deny Contagious Individuals Entry (The State of Qatar: A Case Study)

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جامعة
الكويت

مجلس
النشر العلمي



ISSN: 1029-8908

العدد ١٢٢ - السنة ٣٥

محرم: ١٤٤٢هـ - سبتمبر ٢٠٢٠م

البحث التاسع

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Dr. Sultan Ibrahim Al-Hashmi⁽¹⁾

تاريخ إجازة البحث: يوليو ٢٠٢٠ م

تاريخ استلام البحث: يونيو ٢٠٢٠ م

Abstract

Contagion is a highly disputed topic in Islamic studies, and has been investigated by Muslim scholars from the perspective of both Islamic law and theology. In this paper, I analyze the Islamic outlook on contagion from a theological perspective by examining the Prophetic Hadiths on the subject. The study then focuses on practical implementations of this outlook in respect to how Muslims should handle those with dangerous illnesses in a personal and social capacity. Finally, the paper examines the moral stance that Islamic law takes on the deportation of contagious immigrants, and attempts to ground the Qatari deportation procedure in such arguments.

Introduction

Praise be to Allah, and May Allah send his peace and blessings upon the Final Messenger, and on His family and

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companions.

This study deals with the question of preventing infectious individuals from immigrating to specific countries. It discusses this issue from an Islamic outlook, as well as in relation to the international human rights resolutions, which obligates states to allow people with infectious diseases (such as AIDS) entry and residence for work within the state.

In this paper, I have dealt with some issues that I hope will answer some problems concerning the position of Islamic law regarding infectious individuals and the measures taken by the State of Qatar to remove patients, or prevent them from entering its territory.

The research problem answers the following question: To what extent do states have the right to prevent people with infectious diseases from entering its lands?

This research problem can be further broken down into the following points:

- 1- What is meant by infectious diseases?
- 2- What is the concept of infection in Islamic creed?
- 3- What is the ruling on a patient mixing with healthy people, and performing ritual acts of worship together?
- 4- What are the procedures to prevent infectious diseases from entering Qatar?
- 5- What are the procedures for deporting people with infectious diseases in Qatar?

The Importance of the Study:

This study is important and relevant for the following reasons:

1. The paper discusses a modern issue that requires clarification. This is because in the modern world travel

has changed drastically, facilitating the fast movement of people across different countries, which increases the spread of infectious diseases. For this reason, it is important to study the Islamic legal rulings related to preventing those infected with infectious diseases from entering the state, and deporting those who are infected and already in the state.

2. The research directly relates to a large group of people, such as laborers, domestic workers and others who migrate to countries to work, and are infected with a contagious illness. These contagious individuals may constitute a dangerous threat to the members of society, and at the same time, they require treatment before they are deported. This paper will study the procedures for their deportation and its legal ruling in Islamic law.

This research aims to study the following topics:

1. Define Infectious diseases.
2. The concept of infection in Islamic creed and law.
3. The Islamic jurisprudential ruling of coming into close contact with infectious people.
4. The Islamic jurisprudential ruling of the contagious performing congregational ritual worship.
5. The Islamic position on deporting infectious people, and preventing them from entering into the country.
6. To study the procedures involved in preventing infectious individuals from entering the State of Qatar, as well as to outline the procedures for their deportation.

Literature Review:

Several studies have been written on the general topic of infectious diseases in Islamic Law. However, I did not find a

paper that studies the ethics of deportating and preventing the contagious people from entering the country.

These studies include the following:

1. The Rulings of Infectious Diseases in Islamic Jurisprudence.

It is an MA thesis produced by the researcher Abdul-Ilah bin Saud bin Nasir Al-Sayf and submitted to the College of Sharia at Imam Muhammad bin Saud Islamic University.

The introduction deals with the definition of infectious diseases, their types, and so on.

Chapter 1 delves into the various rulings pertaining to infectious people performing acts of worship.

Chapter 2 examines rulings related to coming into close proximity of those with infectious diseases.

The researcher did not expound on the Islamic rulings of deportation or the denial of entry into the country.

2. The Rulings Concerning the Transmission of Infectious Diseases, A Jurisprudence Study.

It is a MA thesis submitted by Hossam Husni Abu Hammad to Al-Quds University in Palestine.

The paper delves into the defining infectious disease and its types, the means of preventing the spread of infectious diseases in Islamic law, and the jurisprudence rulings resulting from the transmission of infectious diseases in acts of worship, family law, and so on. The researcher did not expound on the Islamic rulings of deportation or the denial of entry into the country.

3. Infectious Diseases and its Consequences on Performing Acts of Worship: A Comparative Jurisprudential Study.

This was an MA thesis written by Abdel-Qader Nouri Al-

Jumaili that was submitted to Al Al-Bayt University in Jordan

The author discussed the definition of infectious diseases and their types, and the effect of infectious diseases on worship (Prayer, Zakah, and Hajj).

He also did not address the issue of the deportation of patients with infectious diseases

Research Methodology:

The paper follows the descriptive analytical approach to study the position of Islamic law on coming into close contact with the contagious, and on researching the Islamic creedal position on contagion. The paper also utilizes this methodology to analyze the procedures for deporting infected people with infectious diseases from the State of Qatar, and evaluates it with accordance to Islamic ethics.

This paper will present in the following format:

Chapter 1: The Definition of Infectious Diseases and their Categories.

This chapter addresses three issues:

Topic 1. Interacting with infected individuals, and the fear of infection.

Topic 2. The ramifications of infectious disease on the infected individuals, with relation to their attendance of the Friday prayer and congregational prayers.

Topic 3. Death caused by infectious disease, and its comparison to the plague, with regards to the reward in the Hereafter.

Chapter 2: The Right of the Patient to Receive Treatment prior to Deportation.

Chapter 3: The International Resolutions Concerning the Deportation of Infectious Individuals.

Chapter 4: The Islamic Ruling on the issue of Deporting

Infectious Individuals back to their Country of Origin.

The research then concludes with a brief summary of the findings.

Chapter 1: The Definition of Infectious Diseases and their Categories.

Defining infectious diseases (Al-Amrad Al-Mu'diyah):

The word “amrād” is the plural of the root “marad”. It is defined in the classical Arabic dictionaries, such as Lisān Al-Arab, as “saqam, which is the “opposite of good health”. Sībaweh declared this word to be from the category of plural verbal nouns, such as “ashghāl” and “uqūl”.⁽¹⁾

Legal jurists define “amrad” to be: “that which affects the body and causes it to depart from its normal state.”⁽²⁾

The term “mu'diyah” is derived from the root “Adwa”, which means contagiousness. The Prophetic statement, “laa ‘adwa” means no disease is infectious.⁽³⁾

Legal scholars also define this term in the same manner, as Al-Tibi defined it as: “an illness that is transferred from one person to another.”⁽⁴⁾

Defining Infectious diseases:

Infectious diseases are diseases that are transferred from a sick person to others by the decree of God. Our knowledge that certain illnesses are contagious is based either in scientific knowledge or is derived from Islamic textual sources.

According to medical doctors, infection is the entry of pathogenic agents into the human body, its subsequent growth, reproduction, and interaction with the body. The pathogens that cause infection consists of bacteria, viruses, and parasites.

(1) Lisan al-Arab (231/7)

(2) Al-Mawsuah al-Fiqhiyyah al-Kuwaytiyyah (17/30)

(3) Mukhtar al-Sihah (pg 203)

(4) Al-Mawsuah al-Fiqhiyyah al-Kuwaytiyyah (17/30)

These pathogens are transferred from sick patient who displays symptoms of the illness, as well carriers of the disease to those who do not show any symptoms. Diseases can also be transmitted from animals, as well as from contaminated utensils, air, or water.

Infectious diseases can be classified into two general categories:

The first category: Infectious diseases that are only transmitted by visibly ill patients, such as leprosy.

The second category: Infectious diseases that are transmitted by both visibly ill patients, as well as carriers, such as those infected with the plague, or AIDS.

Topic 1: Interacting with Infectious Individuals and the Fear of Contagious Diseases

Between Affirming and Negating Infection

There are several prophetic traditions relating to this topic that are seemingly contradictory, and therefore require Reconciliation . Scholars have differed over the manner in which to Reconcile between these narrations. Some have argued that certain texts were abrogated, while others have weakened specific narrations. Furthermore, others have attempted to reconcile between all of these narrations without weakening or abrogating any of the texts.

The following are the prophetic traditions that confirm that infection exists:

1. The Prophet said: “Flee from the leper as you would flee from a lion”⁽¹⁾.

2 - Amr ibn al-Sharid reports that his father informed

(1) Sahih al-Bukhari (5707), Musnad Ahmad 443/2

him that there was a leper in the delegation of Thaqīf, so the Prophet sent him a letter saying: “Return, for I have accepted your pledge.”⁽¹⁾

3- The Prophet said: “The plague was a punishment for those who were before you - or for the children of Israel - if it spreads within a land then do not abandon that land, and if it is within a land, then do not enter it.”⁽²⁾

4- The Prophet said: “A man with sick camels should not let them graze or drink alongside healthy ones.”⁽³⁾

5- The Prophet said: “Do not continually stare at those who have leprosy.”⁽⁴⁾

6- The Prophet said: “Do not stare at those (who have leprosy).”⁽⁵⁾

There are other narrations that seem to deny the existence of infection, such as the following:

1 - The Prophet said: “There is no infection, and there are no evil omens.”⁽⁶⁾

2 - The Prophet said: “There are no contagious diseases, nor any evil omens, nor the Safar; nor the Hama”. A Bedouin man then said, “O’ Messenger of God, what then about the camels that are as beautiful as deer, but then come into contact with a camel infected with scabies and immediately also becomes infected?” The Prophet responded: “But who

(1) Sahih Muslim (2231), Sunan Ibn Majah #3544

(2) Sahih al-Bukhari (5771), Sahih Muslim 2221

(3) Sahih al-Bukhari (5774)

(4) Musnad Ahmad (581), Ibn Majah (3543), al-Tarikh al-Kabir (417), Sahih al-Jami (7269)

(5) Musnad al-Tiyalisi (2601), Sahih al-Jami (7239)

(6) Bukhari (5707), Muslim (2222).

infected the first camel?"⁽¹⁾

3 - Jabir reported that the Prophet took the hand of a leper and put it with his hand inside the bowl, and said: "Eat while trusting in God, and with reliance on him".⁽²⁾

4- Ibn Abi Shaybah narrated in his Al-Musannaf that: Salman used to work with his hands, and would then buy food and send for the lepers to eat with him.⁽³⁾

5 – Aisha reported: "I had a servant who was afflicted with this disease, and he would eat from my plate, and drink from my cups, and sleep on my bed."⁽⁴⁾

6 - 'Abdullah ibn Ja'far narrated that: "I saw Umar ibn al-Khattab given a vessel with water in it, and he gave it to Muayqib, who was a man who was very ill. Omar gave it to him and he drank from it, and Omar then put his mouth where Muayqib's mouth touched when he drank from it. I know that he did this to avoid infection."⁽⁵⁾

7- Ibn Abi Shaybah reported that: Abu Bakr was approached by a delegation from Thaqif. When they presented him with food, the people moved towards it to eat, while a leper moved away. Abu Bakr then said to him: "Approach the food", and so he did, and then he said: "Eat" and so he ate, and Abu

(1) Bukhari (5717), Muslim (2220)

(2) Sunan Abi Dawud (3925), Sunan al-Tirmithi (1817), Sunan Ibn Majih (3542), al-Mustadrak (7196). Ibn Hajar graded the narration as "Hasan".

(3) Al-Duafa (6029), Albani graded it as authentic in al-Silsilah al-Daefah (1144).

(4) Tahthib al-Athar (82), Ibn Hajar did not grade it, so it is not weaker than a Hasan narration.

(5) Al-Tabaqat by Ibn Sad (5024), al-Arnaout graded it as "strong" in his edition of Siyar A'lam al-Nubala.

Bakr would then eat from the places where his hand had just touched.⁽¹⁾

Reconciling between the Narrations that Affirm and Deny Communicable Diseases:

Many distinguished jurists have reconciled between these affirming and negating traditions by applying the juristic maxim that says reconciling between contradictory traditions is preferred over ignoring one and selecting the other.

There is no evidence to suggest that one set of traditions was abrogated, as there is no way to date either collection of traditions. This is the reason why many scholars have repudiated this line of reasoning. Al-Nawawi points this out, stating that “this is an error due to two reasons: the first reason is that it is a pre-requisite of abrogation that reconciling between the two traditions be impossible, and this isn’t the case here. The second reason is that for abrogation to be considered, we must first have knowledge of the dates of each tradition. This isn’t known to us in this case.”⁽²⁾

Ibn Hajar also states something similar, as he points out that “utilizing abrogation in this circumstance must not be considered, since it cannot be applied while there is doubt regarding the dates of the origins of the texts, especially if reconciling between the two sets of traditions is possible.”⁽³⁾

Ibn Rajab al-Hanbali confirms this, stating that “there are traditions that have perplexed many people, to the point that many have said that they abrogated the traditions denying the

(1) Musannaf Ibn Abi Shaybah (24535)

(2) Sharh Al-Nawawi ala Sahih Muslim – (14/214)

(3) Fath al-Bari (242, 243/10)

infectious nature of diseases.” He then said: “and to claim that these traditions were abrogated is an error, since these traditions relay information, and are not commands. This is unless you interpret those traditions to be commanding the Muslims to not believe that diseases can be contagious, and not abrogating the concept of contagiousness. Therefore, the correct position is that these texts were not abrogated. This is the position of the majority of Muslim scholars.”⁽¹⁾

Scholars Who denied the possibility of abrogation differed in how they can reconcile between them:

Al-Nawawi makes clear that the majority of scholars state that it is necessary to reconcile between these two hadiths, as they are both authentic. One may do so by interpreting the hadiths that negate contagiousness to mean the negation of the beliefs of the Pre-Islamic Arabians, as they held that diseases were transferred from person to person of their own volition, and not by the will of God. The other hadiths that confirm contagiousness by directing people to avoid encounters that normally lead to the spread of disease, confirm the concept of infectious diseases, but only by the will of God. Therefore, the confirming traditions are addressing the transfer of disease of their own will, while the negating traditions address situations where God, by his will and decree, allows the spread of disease. This is the position of the majority of scholars, and is the correct view.”⁽²⁾

Ibn Rajab made a similar statement, stating that: “The correct view, and the position of the majority of scholars, is that

(1) Lataif al-Marif pg. 68

(2) Sharh Sahih Muslim (213-214/14)

abrogation cannot be correctly applied in this circumstance. Rather, the scholars have differed as to the meaning of the statement: “There is no infection.” The most correct view on this matter is that the denying narrations were addressing the Pre-Islamic Arabian belief that infectious diseases spread independent of God’s will. The evidence of this interpretation is the hadith in which the Prophet says: “But who infected the first camel?” This indicates that the first camel was infected by the will of God, and therefore, so did the second camel. ⁽¹⁾

Ibn al-Qayyim said: “There exists no contradiction (between these narrations). The narrations indicate that both possibilities are permissible, as the first set of the narrations apply to one type of people, while the second set applies to another type. Those with strong trust in God may act upon the first set of narrations that deny contagiousness, while those with weaker trust in God may act on the second set. Both are supported by the Prophetic tradition. ⁽²⁾

There are several methods of reconciling between these seemingly contradictory traditions:

The first method: is to deny the occurrence of infection altogether, and that the command to flee from the leper was actually meant to protect the leper emotionally, since seeing physically healthy people might injure the leper’s feelings. Other hadiths such as the those commanding the Muslims to not gaze at the leper can also be interpreted in this manner.

The second method: is to interpret both the traditions that negate and confirm contagiousness to be referring to

(1) Lataif al-Marif pg 69

(2) Al-Turu al-Hukmiyyah 738/2

two different cases. The hadith that negates infection was addressing those with strong dependence and trust in God, while the hadiths that affirm it address those who have weak dependence on God. The person with little trust in God is incapable of pushing away beliefs of contagiousness. The Prophet's order to avoid the leper resembles his order to not perform moxibustion, even though it is a permissible act. Therefore, he said both statements in order to put both parties at ease.

The third method: Abu Bakr al-Baqlani said: Leprosy and other diseases specified in the prophetic traditions are exemptions to the general negation of contagious diseases. Therefore, the prophetic statement negating contagiousness does not include diseases such as leprosy and scabies. Thus, it can be said that the statements negating contagiousness do not include the diseases that are otherwise specified by the sacred texts to be infectious. This was also stated by the scholar Ibn Battal.

The fourth method: The prophetic command to run from the leper is not related to infection; rather it is due to a natural reason, which is the transmission of disease from body to body, through contact, interaction and smell.

As for the meaning of the hadith: "there is no infection", it involves a situation in which a disease is spreading within a land, and people are escaping that land in order to avoid infection. In other words, it is commanding against attempting to escape from God's decree.

The fifth method: That the meaning of the hadiths negating the contagiousness of disease is to negate the belief of the pre-Islamic Arabs who believed that diseases spread independent

of God's will. The Prophet refuted this belief, and ate with the leper in order to demonstrate that God alone causes people to fall ill, and he alone heals them. He prohibited people from coming into contact with lepers to demonstrate to them that Allah has chosen it to be one of the causes of leprosy.

Al-Bayhaqi said: As for the Prophet's statement: "There are no infectious diseases." This is negating the belief of the Pre-Islamic Arabs who attributed the spread of disease to other than God. However, God can cause certain things or actions to be causes for sickness, such as close interactions with the sick. This is why the Messenger said: "Run from the leper as you would from a lion".

The sixth method: is to deny contagiousness period, and to interpret the command of avoiding the sick person as a means to block the path to that which may lead to sinfulness. This is so that, in the case of someone coming into contact with a sick person and then becoming sick, he does not blame the sick person and affirm that which Islam denies. This is the position of Abu Ubayd along with other scholars. Abu Ubayd said: the hadith: "A man with sick camels should not let them graze or drink alongside healthy ones" does not affirm the phenomenon of infection, rather it was said because a person who becomes ill after interacting with a sick person may think to himself that he contracted this illness from the sick person, causing him doubt and tribulation. ⁽¹⁾

Ibn Hajar said: "It is possible to reconcile between his (the Prophet's) actions and his statements. His statements were directed at those of weakness, whereas his actions

(1) Fath al-Bari (159,160,161/10)

were directed at those of true faith. Therefore, whoever acts upon the first accounts has acted with accordance to the Prophetic tradition. Likewise, whoever acts on the second set of traditions has more certainty in his faith, because nothing can occur except by the will of God. God says: "But they do not harm anyone through it except by permission of Allah" (2:102). Whoever possesses strength and certainty may follow the Prophet's actions, and nothing will befall him. Those with weakness may follow the Prophet's statements to flee from the sick person, so that his actions are not considered as "putting one's self in harmful way".

He also said: "The hadith was directed at the majority of people, since most people are weak (in their faith), and so the command to flee was a result of that." ⁽¹⁾

The correct view with regards to reconciling between the various positions of the scholars on these multiple narrations is that the Prophet's statement: "there is no infection" was intended to refute the beliefs of the Pre-Islamic Arabs who believed that sickness was transmitted from person to person without the will of God. However, God has ordained that sickness to be transmitted from person to person, and that is why the Prophet said: "flee from the leper as you would from a lion", and "A man with sick camels should not let them graze or drink alongside healthy ones", and said about the plague: "whoever hears of the plague in a land should not enter it". All of these statements affirm infection, but only by the decree of God.

"We affirm, based on our knowledge of the nature of

(1) Fath al-Bari (162/10)

diseases: that infection is a certain phenomenon, as we know of thousands of infectious diseases that affect humans in different ways. Each infectious disease transmits in a unique way, as some are transmitted through food and drink, and others by exposure to blood, and others are sexually transmitted. Additionally, each type of pathogen has a certain dose called the “infecting dose”, which is the number of units that must enter the body for the person to become ill. The susceptibility of individuals to infectious diseases also differs from person to person, and from race to race, and may vary based on the weather conditions and other variables. Hence, for an infectious disease to infect a person, several conditions must first be met, and not everyone merely exposed to a certain type of pathogen necessarily becomes ill. For example, if 100 children were exposed to the poliovirus, only one child would become paralyzed. The 99 other children would not become paralyzed, but on the contrary, acquire permanent immunity against the polio-induced paralysis. ⁽¹⁾

Coming into contract with the Sick, and the Fear of Infection:

Islamic law seeks to protect the safety of individuals, and to safeguard them from harm and destruction, including the protection from diseases and epidemics. Exposing one's self to such illnesses falls under the category of putting one's self in harm's way. The Prophet eluded to this by saying: “Flee from the leper as you would from the lion “. His prohibition from entering the land of the plague, and his statement: “A man with sick camels should not let them graze or drink

(1) Al-Mawsuah al-Tibbiyyah al-Fiqhiyyah pg 702

alongside healthy ones” also point to the same conclusion.

The Prophet's statement: “There is no infection” is therefore interpreted to mean that disease does not transmit on its own. The Prophet ate alongside the leper to clarify this point, and to refute the beliefs of the pre-Islamic polytheists that believed disease spreads independent of the will of God.

Similarly, the Prophet's prohibition of coming into close proximity of the leper indicates that it is a means to harm, and that infection is something that God has made a universal means for the spread of disease.

Denying these causes is implying fault in the wisdom of God, and ignoring it demonstrates a fault in one's practice of the religion. At the same time, relying on it entirely without God is a weakness in the faith of the believer. Ibn al-Qayyim said: «And there were those who affirmed it (infection) based on its physical existence, as well as its mentioning in the sacred texts, and believe in it as intended by God, which is that disease spreads by the will of God. God therefore has the ability to cause the disease to spread, and has the ability to make it not spread and render it powerless. This is so that the creation knows that God is capable of doing whatever pleases Him”.⁽¹⁾

Hence, coming into proximity with the sick has the potential of causing harm, and harm must always be avoided. This is especially the case if both the Islamic texts and scientific knowledge affirm that a particular matter is harmful, in which case, the default ruling is that it is forbidden to engage in such a matter. This is true even if not explicitly forbidden in the

(1) Madarij al-Salikin (257/1)

Islamic texts.

Al-Qarafi says: “Al-Munawi said regarding the Messenger’s statement “If you know that the plague has spread in a particular land, then do not enter it” that it is forbidden to do so, because engaging in it is blameworthy courage and is considered to be placing one’s self in danger. The Religion prohibits one from doing so, as God says: “and do not cast yourselves into destruction with your own hands. (2:195).⁽¹⁾

Therefore, quarantining the sick person and isolating him from other healthy people, with the exception of cases of absolute necessity, is a religious obligation, and a fulfillment of the Messenger’s command: “flee from the leper as you would from the lion”, and his statement: “A man with sick camels should not let them graze or drink alongside healthy ones”. The jurists have established that the leper is to be quarantined, and so this also applies to other infectious diseases by means of analogous reasoning (qiyas)⁽²⁾. The Maliki, Shafie and Hanbali schools prevented the leper from mixing with non-infected individuals, in order to prevent the harm that is a result of such interactions. Although I could not find the Hanafi ruling on this matter, their legal system of protecting the five universals of the Shariah, and specifically preventing harm from occurring, would indicate that they agree with the majority.

(1) Al-Furuq (258/5)

(2) Qiyas is the extension of a ruling from an original case (asl) to a new case (far’) because the new case has the same effective cause (‘illah) as the original case. See: Abdul-Rahim Al-Isnawi, Nihayat al-Sul, Dar al-Kutub Al-Ilmiyyah, Beirut, Lebanon, 1999, 1st ed.

Some scholars have stated that if a non-infected person allows the infected person to come within close proximity to him, while knowing of his condition, that the infected person is not sinful. This is based on the narration of Jabir stating that the Messenger took the hand of a leper and placed in it his bowl, and said: ““Eat, with trust in Allah and reliance upon Allah.” This is also the position of the Hanbali school of jurisprudence, as they have stated that that it is prohibited for a leper to come into contact with a non-infected person unless he is aware of his condition.

However, in the case in which the non-infected person is unaware of the infected person's condition, or if he requested him to not come into contact with him, then it is prohibited for him to do so. This is based on the narration of Amr ibn Al-Sharid reporting from his father, that a leper was in the delegation of Thaqif, and that the Prophet sent to him saying: “return, for I have accepted your pledge ”, and he did not allow for him to join him in the meeting.

Topic 2: The Impact of Infectious Disease on Attending Friday Prayers and other large Gatherings.

Protecting people from illness and harm is a principle objective (maqsad) and axiom of Islam⁽¹⁾. Hence, the majority of Islamic scholars have allowed the infectious person to miss the Friday and congregational prayers. In fact, they have explicitly stated that the Muslim ruler has the authority to prevent infectious individuals from attending if they insists

(1) Maqasid are the wisdoms and reasons behind the Divine legislator instituting various rulings.

See: Allal al-Fasi, Maqasid al-Shariah wa Makarimuha, pg. 7, Dar al-Gharb al-Islami, 1993, 5th ed.

on attending, due to the harm that their attendance may cause other congregants. Their evidence for this ruling is the report mentioned in Al-Bukhari that the Messenger said: “There should be neither the causing or harm nor reciprocating harm”, and the narration: “flee from the leper as you would from the lion”.⁽¹⁾

They also relied upon the hadith: “Whoever has eaten from this plant (i.e. garlic) should not enter our mosque.”⁽²⁾ Just as the Messenger prevented the person who has consumed garlic from attending the congregation because of its harm on others (i.e. foul odor), likewise it is prohibited for an infectious person to harm others by putting them in harm’s way by potentially infecting them. The author of Al-Taj wa Al-Iklil states that the Friday prayer is not an obligation on the leper because “Their attendance is harmful to the people, and this is why the Messenger commanded the people to shower before attending the congregation, because their foul odors would cause harm to those around them. If this was the case, then leprosy is far worse.”⁽³⁾

Shaykh Al-Islam Zakariyya Al-Ansari cites al-Zarkashi stating that: “the correct opinion is that he is excused from the obligation, since the harm that he causes is potentially greater than the harm caused by eating garlic. Al-Qadhi Ayyad also reported that the majority of the scholars stated that the leper is to be prevented from entering the mosque and from attending the Friday prayer, and from mixing with

(1) Sunan Ibn Majah (2340), and Suyuti graded it as “Hasan”.

(2) Sahih al-Bukhari (853)

(3) Al-Taj wa al-Iklil (556/2)

people in general.”⁽¹⁾

Al-Buhuti says something similar in *Kashaf Al-Qina*, as he states that: “Likewise, the leper (is to be prevented from entering the mosque) due to analogous reasoning (qiyas) to the one who has eaten garlic and such, because it causes harm.”⁽²⁾

Ibn Abdul-Barr also confirms this, as he says that: “the hadith contains several legal rulings, such as that the individual who consumes garlic should remain far from the mosque. If the reason for this is that he causes harm to others, then by analogy, anything that causes harm to others, such as leprosy, takes a similar ruling and the people have the right to prevent them from entering the mosque.”⁽³⁾

Hence, diseases that cause others harm, either because the infected person has a foul smell or appearance, or because of its contagious nature, then he is excused from the obligation of attending the Friday congregation and the daily congregation for prayer, and he should not mix with non-infected people. If he does, then the ruler has the right to prevent him from entering the mosque and mixing with the people. The leader must then arrange for him to receive his necessities, such as his food, drink and medication.

The AIDS virus is one of these dangerous infectious diseases, and although many doctors state that “the AIDS virus is not transmitted by saliva, sweat, urine, respiration, or handshaking⁽⁴⁾, others state otherwise. Some medical experts

(1) *Asna al-Matalib* (215/1)

(2) *Kashaf al-Qina* (498/1)

(3) *Al-Tamhid* (422-423/6)

(4) *Qissat al-Aydz*, pg 91

have stated that it is possible for it to be transmitted by means of saliva, as lymphocyte T cells are sometimes present in the saliva, and some researchers have been able to extract them from the saliva of those infected with AIDS. This supports the view that AIDS may be transmitted by kissing, or by saliva that is sprayed into the air during sneezing or coughing. ⁽¹⁾

Therefore, according to Islamic jurisprudence, it is obligatory to take precaution and to prevent potential harm from befalling healthy individuals. Ibn al-Qayyim stated that “the Messenger legislated that people are to avoid potential illness, and instructed healthy people to avoid those who are sick.”⁽²⁾

Topic 3: Death due to Infectious Disease and comparing it to the Plague with regards to Reward in the Hereafter:

Many reports have stated the great reward of the ill person who is content with the decree of God and who shows patience. The more severe the illness, the greater the reward of this person will be in the Hereafter. If this person passes away due to this illness, then God will elevate his status and include him among the martyrs on the Day of Judgment.

Abu Hurayrah reported that the Messenger said: “Whom do you consider to be a martyr among you? They (the Companions) said: O’ Messenger of Allah, he is the one who is killed in the path of Allah. He said: Then the martyrs of my community will be small in number. They asked: Then, O’ Messenger of Allah, who are they? He said: The one who is

(1) Al-Aydz: Mu’dilat al-Tibb al-Kubra, pg 197.

(2) Zad al-Miad

killed in the path of Allah is a martyr; the one who dies in the way of Allah, is a martyr; the one who dies of the plague is a martyr; the one who dies of a stomach illness is a martyr.”⁽¹⁾

There are several hadiths that list various types of deaths as cause of martyrdom. Ibn Hajar says the following regarding this: “We have discovered over twenty characteristics from various narrations”, and he mentioned: “he who has died after being bitten by a snake, he who has died at sea, he who was killed by a wild animal, he who has died after falling off of his horse, he who has died from sea sickness, and he who has died due to falling off of a mountain”.⁽²⁾

Aids and other contagious diseases are undoubtedly analogous to the plague and other illnesses that the Messenger mentioned to be causes for martyrdom.

All of the aforementioned causes for martyrdom that the Messenger mentioned include illnesses that cause a great amount of pain and suffering, while their mental faculties are still in place, along with their ability to feel pain. These characteristics apply to AIDS and other similar diseases.

Al-Nawawi said: “The scholars have said that: These deaths were mentioned as causes for martyrdom because of their severity”.⁽³⁾

Some scholars have mentioned a standard for what qualifies as martyrdom. That standard is: “Everyone that has died due to a painful and persistent illness, or a dangerous illness, or a sudden plague, has the reward of the martyr.

(1) Bukhari (653)

(2) Fath al-Bari (43-44/6)

(3) Sharh al-Nawawi on Sahih Muslim

The first type includes: A person who dies of an abdominal disease, the second type includes: the person who has died of the Plague, and the third type includes: a person who has died due to drowning”.⁽¹⁾

Ibn Taymiyah was asked about whether a man who has died while being out in sea for trade is considered a martyr. He answered: “Yes, he has died a martyr, so long as his trip was not considered sinful”.⁽²⁾

Hence, if the infected person is patient, awaits the reward of God, while not engaging in sinful activities, then he is considered a martyr after passing away.

Chapter Two: The Right of the Sick to Treatment before their Deportation.

Islamic law recognizes the safety of the person’s life as one of the five universal necessities that need protecting. Likewise, anything that contributes to the safety and security of a life must also be protected. The Quran explains the importance and sanctity of the life, as it says: “And whoever saves a life - it is as if he had saved mankind entirely” [05:32]. Ibn Kathir mentions several various opinions while explaining this verse, one of them being that the “saving a life” entails saving a person from drowning, burning, or such.⁽³⁾ Therefore, saving the life of an ill person who, without treatment will likely pass away, is also included in the verse.

Thescholarsfromacrossthevariouschoolsofjurisprudence

(1) Fayd al-Bari (248/2)

(2) Majmu’ al-Fatawa (293/24)

(3) Tafsir Ibn Kathir (84/3)

have agreed that it is compulsory to save another's life. In *Tuhfat al-Muluk*, it states that: "It is compulsory to provide food and drink for the one who is unable to feed and provide for himself".⁽¹⁾ Likewise, *Al-Dusuqi* mentions in his *Hashiyah* that: "It is compulsory to save a person who he believes is on the verge of death, even if it involves spending money (to save him)."⁽²⁾ *Al-Nawawi* also mentions something similar in *Rawdat al-Talibin*, as he says that: "If the owner (of the food) is not in dire need (of the food), then it is compulsory upon him to feed a person who is in dire need of it, whether that person is a Muslim, a he non-Muslim citizens, or a non-Muslim visitor given safe passage. This is also the case if the owner is in need of it but not immediately, according to the correct position of the school"⁽³⁾. In *Al-Mubdi'*, it also states that: "If the owner of the food is not in need of it, then he is required to give to he who is, because this will save someone's life."⁽⁴⁾ The above quotes demonstrate that it is compulsory to save the life of someone who is in danger of dying. A sick person who is in danger of dying due to illness is also included in this verdict, and therefore, saving his life and reducing his pain is compulsory.

Based on this, it is clear that it is compulsory upon the government to treat those that are ill while residing within its lands, especially when they are sick with dangerous and contagious diseases that are typically fatal, or contagious because they may affect a great number of people.

(1) *Tuhfat al-Muluk* (84/3)

(2) *Hashiyat al-Dasuqi* (111/2)

(3) *Rawdat al-Talibin* (552/2)

(4) *Al-Mubdi Sharh al-Muqni* (181/9)

Therefore, sick immigrants must be treated, regardless of their religion. This is especially the case when the country can fiscally afford such treatment.

The procedures of the medical commission of the State of Qatar in the treatment of infectious diseases before deportation:

The Regulations of the medical commission of the State of Qatar follows the following procedure for those entering the country with the intention of working. It tests for the six following diseases:

1. HIV infection.
2. All forms of Pulmonary Tuberculosis.
3. Hepatitis Virus (B,C)
- 4- Syphilis Infection.
5. Kidney failure.
6. Leprosy.

Article 7 states that people infected with TB are referred to the Infectious Diseases Clinic for diagnosis and treatment, and are then issued a health certificate according to the following criteria:

1. Those with contagious TB are treated and given a health certificate after the disease is no longer contagious.
2. People with non-communicable tuberculosis or those with old TB are given a health certificate for work immediately after treatment begins.

Article 9 states those infected with Syphilis follow these procedures:

After confirmation of the result of the diagnosis of Syphilis, treatment should begin with three doses of penicillin administered by injection of the muscle every week for three

weeks. The person is then issued a health certificate after the first dose.

If the infection is still active, the patient is then transferred to the infectious diseases clinic, and must seek the recommendation of the consultant.

Article 10 states that those infected with the hepatitis B virus must follow the following procedures:

The infected person is treated according to their occupation.

Those working in the food industry, as hairdressers, flight attendants, nursery workers, veterinarians, health inspectors and domestic workers are not fit to continue in their work, with an exception given to health and veterinary inspectors who do not deal with food. Also, “personal kafalah” is based upon the person’s occupation, after being transferred to an infectious diseases clinic, and following the instructions of the consultant.

Other groups are referred to the infectious diseases clinic and must follow the recommendations outlined in the report.

The same process applies to those infected with hepatitis C. These are the most important procedures for people with infectious diseases in the State of Qatar. They are in accordance with the principles of Islamic law in the treatment of the sick, as well in their deportation after the completion of their treatment.

The Medical Clinic in Qatar does not have the authority to deport them. Their task is to examine infectious diseases and issue certificates. Deportation is the responsibility of the relevant authorities, which often takes the recommendation of the medical clinics into consideration.

Article 58 of the International Islamic Charter on Medical Ethics and Health states: “A person infected with AIDS or other communicable diseases shall be entitled to treatment.”

Other countries, such as Italy for example, have laws preventing the deportation of sick illegal migrants, and they are given temporary residency permits in order to complete their treatment.

This is in full agreement with the principles of Islamic law that respects humanity and provides for them the right to live and receive treatment, regardless of their race or religion.

Article 28 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of 18 December 1990, states: “Migrant workers and members of their families shall have the right to receive all medical treatment necessary to save their lives, and to prevent irreversible harm to their health, on the basis of equal treatment with the nationals of the state.”

The Prophetic tradition supports this principle of treating the sick, as Anas ibn Malik narrated that some members of the tribe of Ukal or Uraynah came to the Messenger, and they found the climate of Medina disagreeable. Allah’s Messenger then commanded them to drink the milk and urine of milch she-camels.⁽¹⁾

The Messenger could have ordered them to return to their homes until they were cured, but instead treated them in Madinah by ordering them to drink the milk and urine of his

(1) Bukhari (233), Muslim (1671), Abu Dawud (4364), Tirmithi (2042), Nasai (4029), Ibn Majah (3503), Musnad Ahmed (370).

camels.

Chapter 3: The International Resolutions related to Preventing the Deportation of those with Infectious Disease from the Country of Initial Diagnosis.

Countries have drafted their rules and regulations in accordance to the international laws and conventions. The immigration laws of every nation demonstrate the extent to which the state has complied with international laws. There are numerous conventions that relate to foreigners, most of which fall under international principles and standards relating to the protection of human rights that were declared in the Universal Declaration of Human Rights, and the Declarations against Discrimination, Racism and Marginalization.

Qatar has been involved in a number of international human rights Conventions, such as:

- The International Convention for the Elimination of All Forms of Racial Discrimination (22 July 1976).
- The International Convention for the Suppression and Punishment of the Crime of Apartheid (1975).
- The Convention for Child Rights, on 3 April 1995 and the two following protocols.
- The International Convention against Torture (11/1/2000).
- The Convention for the Prevention of Discrimination in Employment and Occupation in 1976.
- The Convention against Torture and Other Cruelty, Inhumane or Degrading Treatment or Punishment (2001).
- The Arab Charter on Human Rights (2009).

One of the most sensitive procedures in international law that relates to human rights is the termination of his residency and his subsequent deportation to his country of origin, as it

may affect the rights of an expatriate resident. This is because it intersects with the sovereign right of the State, especially with well-established reasons and grounds for its decision.

“The jurisprudence of international law states that although deportation of a foreigner is the right of the State, the State must not must abuse this right ... Generally, any unjust action is prohibited in the implementation of the deportation laws, otherwise the State of the deported expatriate may contest it and to seek compensation on his behalf on the basis of international responsibility.”⁽¹⁾

Article 13 of the International Covenant on Civil and Political Rights⁽²⁾, in its general declaration concerning the deportation of expatriates, stated that “It is not lawful to deport lawfully residing expatriate in the territory of a State that is party in this covenant, unless it does so in accordance to the law. And after deporting him - unless there is a reason pertaining to national security – it should present the reasons for his deportation, to present his case to the relevant authorities, and to appoint his representative to both them and him.”

According to law experts, the infection of an expatriate

(1) Al-Qanun al-Duwali al-Aam (pg 372)

(2) . The International Covenant on Civil and Political Rights is one of the most important international pacts on human rights. It is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966 and entered into force on March 23, 1976, as reported by the National Human Rights Commission. The provisions of this Covenant in the Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live were affirmed and made public by United Nations General Assembly resolution 40/144 of 13 December 1985.

with an infectious disease is not a sufficient reason for his deportation, especially if he has contracted this disease from his country of residence.

The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is one of the most important conventions dealing with the rights of expatriates. Article 7 of this Convention states:

«State members pledge to respect and secure the rights outlined in this convention to all migrant workers and members of their families in their territories or under their jurisdiction without discrimination of any kind. Any discrimination based on gender, race, color, language, religion, belief, politics, national or ethnic origin, nationality, age, economic status, property, marital status, birthplace or any other status will not tolerated.»⁽¹⁾

Although Qatar is not a member of this convention, the majority of the world's countries are a party, and most countries adhere to it. It is also a standard for human rights.

There is no doubt that the deportation of a sick person who has contracted a contagious disease during his stay in the state is grounds for his suspension or dismissal from his work. This may be seen as discrimination, as local laws prevent the state from suspending or dismissing the citizen suffering from the same contagious disease from his work, so long as there is no fear that his illness will spread to others.

(1) . The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 158 / Adopted by General Assembly resolution 45 of 18 December 1990.

If, however, this is a possibility, then he is to be transferred to another job in which this harm is no longer present. If this is not possible, he will be suspended from his job until he is free from the disease and no longer a danger to his co-workers. This distinction is contrary to international human rights laws. Some international documents have stated that suspending HIV / AIDS patients from their jobs or deporting them because of their illness, is classified as discrimination and a violation of human rights.

Chapter Four: The Ruling of the Islamic Sharia on the Deportation of those Infected with Contagious Diseases to their Country of Origin.

The First Topic: The Definition of Deportation:

Deportation is the state's right to order a person to leave their territory, or to remove him without his consent. The state's right to deportation is based on its right to exist and to maintain its entity, and to protect its citizens and society from harm and danger. Just as it may prevent any person from entering its territory if that threatens its security and safety, it may also to expel from its territory any foreign presence that causes it danger.⁽¹⁾

Deportation was also defined from another juristic point of view as: "the right of the State to terminate the residence of an expatriate for reasons related to the security of the people within the State."⁽²⁾

In order to reach a religious verdict, this matter must first be categorized into three cases:

(1) Al-Qanun al-Duwali al-Aam (292)

(2) Al-Wajiz fi al-Qanun al-Idari.

1- The case in which expatriates contracted infectious or epidemic during their stay in the state's territory.

2 - The case in which expatriates entered the territory of the state, but the state did not detect their illness before he entered.

3 - The case in which expatriates were already suffering from an illness at his time of arrival, or in which they circumvented the state's medical tests and succeeded in entering its territory while ill.

Examining the texts of the Shariah reveals that it is unfair to deport an expatriate who has entered the state legally and has lived in it for a long period of time, as it is most likely the case that he contracted the disease from within the state. However, preventive measures, such as subjecting him to medical quarantine, are required. By following this procedure, he is treated just as the ill citizens with the same illness are treated.

There is a chance that this expatriate was infected in his country of residence, by coming into contact with sick citizens, or as a result of his work conditions. Deporting this expatriate will only cause him more suffering, and the legal axiom states: "Harm is to be removed". This is in reference to non-epidemic diseases. As for deporting patients infected with epidemic diseases, it is against the prophetic guidance to deport them, as Abdul-Rahman ibn Awf narrated that the Messenger said: "When you hear that the plague has spread within a land, do not go there. If it breaks out in the land you are in, do not go out fleeing away from it. "

It is lawful to deport the expatriate of the second and third cases according to Islamic law as it brings about the

greater good and eliminates possible harm from the citizens of that county. It is the duty of the leader of the nation and his government to look out for the general well-being of the nation, and when the leader has to choose between a avoiding a particular harm and a general harm, he is required to avoid the general harm, as made clear in the books of Islamic law. This is demonstrated in the statement of the Prophet, as he said: “Do not allow sick camels to graze or drink alongside healthy ones.” As well as in the hadith of Amr ibn Al-Sharid in which the Messenger told the leper: “Return, for I have accepted your pledge.”

Therefore, since the Prophet commanded the leper to not join him in the pledge ceremony and ordered him to leave Madinah because he had a contagious disease, it is also legally legitimate to deport an expatriate, especially since he entered the country for career related reasons, and not for religious reasons, as the leper did. The Islamic jurists have also discussed the matter of preventing the person with a contagious illness from performing pilgrimage, and these discussions were documented in contemporary academic research papers. The conclusions of all of these researchers is that if trustworthy medicals doctors testify that the pilgrim is too ill to come into contact with the other pilgrims, or that there is a good chance that his illness will spread to others, then he is to be prevented from performing pilgrimage. The ruling of Ihsar (being prevented from performing the essential acts of Hajj) then applies to this person.

Some jurists⁽¹⁾ have stated that it is permissible for the

(1)

people of a city to prevent a person infected with a contagious disease from performing pilgrimage. They stated this despite the great reward of performing pilgrimage. Therefore, deporting a sick expatriate who is infected with a contagious disease who has entered the state with the intention to work is also permissible, since employment is a less important than performing pilgrimage.

Saudi authorities have adopted this opinion based on the fatwas of their leading scholars. In 2001, for example, they prevented the citizens of the State of Uganda from entering the Holy Land to perform Hajj due to the spread of the deadly Ebola virus in their country. It also required a number of countries that reported outbreaks to show proof of vaccination against certain infectious diseases, in according with the latest World Health Organization publications.

The deportation of those who can potentially harm Muslims has a basis in Islamic law. It has legislated the expulsion and alienation those who have the potential of harming others concerning their faith, their health, or their family honor. There are several authenticated reports to the Prophet and his companions that verify this concept.

Therefore, it can be demonstrated via analogous reasoning that deporting individuals with infectious diseases who have the potential of harming others is permissible, since preserving life one of the universal principles of Islam.

Law No. (3) of Article 21 of the year 1963 regulating the entry and residence of foreigners in Qatar states that the Interior minister may, after obtaining the ruler's approval, issue a decision to deport any alien who's presence proves to be threatening to the internal or external security of the

State, its economy, its public health, its public morals, or if his presence proves to be burdensome on the state. The decision to deport a foreigner may include members of his or her foreign family who are responsible for them.

Conclusion:

The following were the most important findings of the paper:

1 – According to the Shariah, it is compulsory to avoid individuals infected with a contagious disease in order to avoid physical harm.

2 – Individuals with infectious diseases must follow the concession (rukhsah) to the general obligation of praying in the mosques and attending places of mass congregation, such as major and minor pilgrimage to Makkah (Hajj and Umrah).

3 – Sick individuals with contagious illnesses will receive great reward for their suffering if they are patient in their calamity. It is correct to equivocate their reward with the reward of those who die of the plague, in that they are considered to be martyrs.

4- The Islamic and legal right for a patient is to be treated for their illness.

5 - The procedures of the medical commission in the State of Qatar examines all those coming to work in the country for infectious diseases.

6 - According to the procedures of the medical commission in Qatar, the patient with an infected disease is to be treated for his illness, is given a certificate demonstrating that he is medically fit after his recovery.

7 - We must distinguish between cases in which expatriates enter the country while being infected with a disease, and

cases where expatriates contract the disease during their stay in the country.

8. Those infected with a contagious disease before entering the country to work must be treated. Once recovered and declared medically fit, they should not be deported. If, however, they do not recover, the State may deport them in the interest of the public health and safety of the citizens of the country.

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