

Jurisprudential and legal examination of the guarantee arising from the violation of the right to health in the face of infectious diseases

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Abstract

Introduction: The right to health as a right means that every person has the right to have access to the highest standard of health, and this right includes all medical-health services, food, housing, healthy work environment and environment. The existence of different dimensions for health, various areas related to health and factors affecting it have made it difficult to define the right to health, and governments are required to make decisions in a wide range of areas in order to ensure the possibility of a healthy life, some of these obligations require serious action and others They must be realized over time. Iran has also recognized this right by approving various laws and regulations in the field of health as well as joining various international conventions, and it seems that the position of this right in Iran's legal system is explained by examining these laws and regulations.

Research Method: Based on the library method, the present article collects opinions related to jurisprudence in the conditions of contagious and epidemic diseases with the jurisprudential category, the legal guarantee due to the violation of the right to health in the face of contagious diseases, and attempts to criticize and analyze them with a descriptive and analytical method. is assigned

Findings: The findings of the research indicate that the jurisprudence-legal system has the ability and capacity to suspend or appropriately change the normal Shari'a propositions based on critical conditions and based on relying on the rules, and as necessary, norms and requirements. determine and make it binding.

Conclusion: According to the mentioned cases, the jurisprudence system can be considered efficient in providing order to social crises and strengthen the coexistence and synergy of jurisprudence and law in adapting to emergency situations in both national and international spheres.

Key words: guarantee, infectious diseases, right to health, violation of health

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Introduction:

Health includes the provision of complete physical, mental and social well-being of humans; According to the definition of the World Health Organization, wellness is not only the absence of disease or other defects in the body, but also the absence of any psychological, social, economic, and physical health problems for every member of the society. Having health care services and maintaining people's health is one of the important pillars of any society (1).

Today, health is one of the basic components and one of the daily human concerns, and regardless of age, gender, race, etc., it is one of the most important social assets. Therefore, one of the greatest divine gifts and blessings that God has bestowed on mankind is the blessing of health, which includes all the physical, mental, and spiritual dimensions of a person, and in the holy religion of Islam, precious teachings have been presented regarding the recognition of its importance and place. whose collection is a comprehensive and irreplaceable system for benefiting from other blessings, human evolution and happiness. In the third, twenty-ninth and forty-third principles of the Constitution of the Islamic Republic of Iran, the necessity of healthcare services as the basic needs of the people is emphasized because the health of the members of the society is a means for human evolution (2).

In addition, in Article 2 of the Charter of Citizen Rights (approved in 2016), the right to life and a decent life, promotion of health, environmental health and appropriate treatment, access to medicine, equipment, goods and medical and health services in accordance with current standards and national standards are the rights of all citizens as It has been made general and in articles 3 and 4 of the aforementioned law, it has been considered the right of all women and children to have appropriate health facilities and treatment to ensure physical, mental and individual family and social health. In addition to the mentioned cases, it has included the above rights to the elderly and able-bodied citizens (with disabilities) (3).

In human rights, health is recognized as a human right and it is one of the rights that other human rights are somehow dependent on, so it is known as a fundamental right and several terms have been used for it, such as the right to medical care, the right to care for Health and even in a broader concept is known as the right to health, but what is referred to today is the right to health. Of course, although health in essence means the absence of disease, the right to have it is not absolute in practice, but relative, because health is lost by the individual's own voluntary or involuntary actions and sometimes as a result of the actions of others. Therefore, the right to health should not be defined as the right to be healthy, not to be sick or not to be disabled (4).

Following the formulation of the World Health Organization's charter stating that everyone has the right to achieve the highest standard of physical and mental health, and this right includes all medical services, public health, adequate food, suitable housing, a healthy work environment, and a clean environment. Health has been recognized in many international

and regional human rights documents. Including paragraph 1 of Article 25 of the Declaration of Human Rights, which contains the following verses:

"Everyone has the right to a standard of living sufficient for his and his family's health, including food, clothing, housing, medical care, and essential social services, and according to paragraph 1 of Article 12 of the Economic, Social and Cultural Covenant, everyone has the right to enjoy the highest level of Achievable physical and mental health" therefore, governments have obligations towards the right to health in three dimensions:

Commitment to respect, support and support; Although governments cannot guarantee people's optimal health, they can provide conditions in which people's health is supported and it is possible for them to achieve health (5). From the point of view of Islamic holy law, this right is inevitable for the exercise of other human rights, and the holy law has recognized it in legislating its rulings and included an executive guarantee for it; Therefore, the right to health as an inherent right means that everyone has the right to achieve the highest standard of physical and mental health, and this right includes all medical services, public health, adequate food, suitable housing, a healthy work environment, and a clean environment. takes over (6).

Therefore, by following Islamic jurisprudence in Iranian law, not only in the constitution, it is possible to follow the traces of its protection, in such a way that Article 21 refers to the right to health during pregnancy, and also Article 20 explicitly refers to human rights without any discrimination between women and men. This is also evident in the vision document of the Islamic Republic of Iran in the horizon of 1404 AH, which was communicated to the leaders of the three forces on November 13, 2002 by the supreme leader of the revolution, in which the enjoyment of health, welfare, food security, social security, opportunities Equally important is the proper distribution of income, avoiding poverty and benefiting from a favorable environment, and the violator of the right to health of others, such as a person carrying the disease of Covid-19, (Corona), if it is intentional or indifferent, is based on the rule of harmlessness and atonement, and in the case that If a person infected with Corona hides his illness and others do not know about it and causes a person or persons to be caught, he is a guarantor according to the arrogant rule (7).

However, one of the factors that can deprive a person of this natural right and can be seen at the level of society and even in the family environment is the violation of the right to health of people by the spread of infectious or contagious diseases, that is, a form of infectious diseases that cause the disease through physical It is transmitted from a sick person to a healthy person in a way that has been emphasized a lot in Shariah teachings and jurists' point of view, because now emerging deadly infectious diseases are on the rise and cause many deaths every year. Few of these diseases are absolute, some are Fatal and most of them are considered non-fatal. The characteristics of relatively contagious diseases include the

existence of a long time interval from the time of transmission to the occurrence of the result of the parties knowing or not knowing that they are infected with the virus, the consent of the parties in some cases, and the fact that the person transmitting And the interference of the effects caused by the transfer with other events will make it difficult to establish and prove the relation of citation, of course, of its real and material type, as a necessary condition in considering the guarantee on the one hand, and assigning different criminal titles to the perpetrator on the other hand, which, of course, although in terms of proof Due to the above-mentioned reasons, in order to establish the reference relationship, some jurists and jurists have considered the implementation of retribution or hadd to be selective on the cause of violation of the right to health and carriers of diseases due to this difficulty, but these issues hinder the proof and implementation of punishments. It is not even a punishment or retribution on the transferor, and the matching of the issue with the characteristics listed in the Civil Law (approved in 92) also confirms the confirmation of various criminal titles with the aforementioned punishments. Of course, in the law on how to prevent sexually transmitted diseases and infectious diseases and the punishment plan for non-implementation of government systems to prevent the transmission or spread of infectious diseases, it was presented to the parliament in May 2019, this issue has been specifically addressed. It is also mentioned in the international health regulations, but most of these regulations have an executive aspect and do not have an executive guarantee (8).

The answer to this question is based on the hypothesis that the coercive guarantee of the natural or legal person of the carrier, regardless of whether it is accompanied by intention and knowledge or ignorance of the disease, due to the establishment of the elements of responsibility and the fact that there is no unjustified loss, is established and ruled. It is certain to compensate for the damage. Of course, it goes without saying that this responsibility can even spread internationally; Like drug embargoers, who will be required to compensate for damages, on the other hand, there should be a distinction in criminal liability, and in the case where the carrier knowingly and intentionally, without knowledge, infects an individual or a group, as a deterrent, the requirement of interests, social Retribution is more compatible with the rules, but in cases where there is no intent to kill or knowledge of lethality or transmission of disease, according to the principles governing the proceedings such as: the legality of the crime and the punishment, narrow interpretation in favor of the accused and the rule of Dara, the sentence is quasi-judgment. Deliberately, in some cases, error coincides with caution. In addition, in some cases, disciplinary responsibility can also be formed. (9)

Mahmoudi (10) in a research titled "Non-observance of hygiene against epidemic diseases (coronavirus) from the point of view of jurisprudence and law" receiving infectious diseases, including contracting corona virus (Covid-19), are considered one of the great challenges for the world that the affairs of the lives of communities They affect humanity. All members of the society have a legal responsibility towards each other and must observe hygiene during

the outbreak of a contagious disease in order not to cause it to be transmitted to others and cause life and financial damage. This treatise examines the jurisprudential and legal verdict of non-observance of hygiene against infectious disease, especially corona, and the guarantee and criminal responsibility of its transmitter with descriptive analytical research method and library documents.

Non-observance of personal hygiene against this disease is based on the rule of sanctity of self-harm, the rule of avoiding possible harm, the rule of saving life, the rule of negation of harm, the public and the application of evidence of the sanctity of suicide and the principle of caution. Failure to observe public health against this disease is also forbidden according to the rule of negation of harm, the rule of respect, the public, and the application of proofs of the sanctity of murder. The carrier of an infectious disease, especially Corona, is a guarantor based on the rule of loss, the rule of glorification, the rule of respect, the rule of negation of harm, the rule of obligation of safety and the rule of obligation to conventional care. The revenge of the person who transmits the disease is canceled in case of the death of the recipient; Because in intentional murder, supervision and predominance of the act of killing are prerequisites, while these two are the problem here. In the case of murder similar to intent and murder due to pure mistake, revenge is excluded in general, including here. (11)

Hedayat Niya (12) in a research entitled "Effects of infectious diseases on marital rights" with a descriptive-analytical method of receiving infectious diseases, whether sexual or otherwise, affects conjugal relations and marital rights, and the subject of jurisprudence and legal rules is. The question to be investigated is to what extent husband and wife have the right to withdraw from each other to maintain health and prevent the spread of disease. Iran's family laws and regulations on this issue are incomplete and ambiguous, and for this reason, its jurisprudential research is necessary. This issue can be examined from two dimensions; One side is the fear of transmitting the infectious disease and the other side is the anxiety caused by it. The fear of illness will generally cause the fall of the obligation to obey and possibly the obligation to withdraw from one's wife. But about anxiety, it should be detailed. Mild anxiety is a natural reaction and has no effect on marital rights; But severe anxiety is a kind of mental disorder and for this reason it should be considered as a legitimate obstacle to compliance. (13)

Research Method:

Considering that the research is a jurisprudential and legal investigation of the guarantee resulting from the violation of the right to health in the face of infectious diseases, the research method is descriptive-analytical of the library type.

In this research, the phishing tool will be used to collect information through the study of books, articles and authentic documents, and the research tool and findings will be based on library findings from the beginning to the end. This research is done in library method. In this research, due to the library method, books and articles related to the subject of the research are used in order to carry out the generalities and literature of the research.

including the differences and existing research gaps, the need for the subject, its possible theoretical and practical benefits, as well as the possibly new research materials, methods or processes used in this research:

Since health depends on many preconditions for its maintenance and continuity, and it is a condition that is always exposed to damage, and this issue itself requires prevention or reduction of threatening factors. On the other hand, it is necessary to restore health after being infected with threatening factors and the existence of facilities and medical care in this direction, in other words, besides the realization of public and private health rights in societies is one of the foundations of achieving a developed society, development is also one of the basic principles. The realization of the right to health is the reason for the presence of governments in this process for the reasons of guaranteeing financial access to individual and public health services, justice in creating suitable health conditions for people, preventing people from falling into the abyss of poverty due to health costs, etc. he does.

This issue is more apparent in today's situation where the society is suffering from the crisis of corona disease, various jurisprudence and legal laws are being implemented in the society, each of them tries to somehow, while informing the people of the society in line with the rights of health and guarantee, to deal with those conditions. To prevent the progress of this disease in the society, and in this field, various arrangements have been considered both from the legal and jurisprudential point of view.

However, the adaptation of jurisprudence rules and the establishment and implementation of domestic standards and regulations in the face of infectious diseases so far in reaching the desired and standard level, especially the creation of culture in dealing with it, is associated with challenges and also in the international scope, various documents have been established, but unfortunately They do not have a good executive guarantee and are only indicative.

Findings:

The findings of the research indicate that health and well-being are considered to be one of the best and most important divine gifts that have been given to mankind, and this is an important daily concern of people, and every person has the right to have access to the highest standard of health, and everyone Community members have the right to use medical, health, food, etc. services. The holy religion of Islam has paid special attention to health.

The spread of infectious diseases with a typically fatal nature are considered a threat to security and health, therefore, controlling the behavior of patients, limiting them and, as a result, preventing its spread among people in society are important issues, and in this regard, strategic measures in disease control such as not hiding the illness, quarantine Getting sick, observing social distance, and using legally allowed vaccines have been considered. Therefore, the question before us is what are the responsibilities of the carrier in case of non-observance of sick people and violation of the right to health, i.e. transmission of a contagious disease to others. (violates health)?

Will there be a guarantee for the damages caused by the disease to the transferor? It seems that although documented damages for the transmission of the disease are considered obvious, but features such as the lethality of the disease and the ignorance of the parties about the contamination have created difficulties in ascertaining, citing and proving the type of responsibility and guarantee resulting from its violation, hence the present article. It has been analyzed in a descriptive analytical way using jurisprudential and legal sources and examining various modes of transmission, and the result is that if a person is infected with a contagious disease (coronavirus, influenza, Ebola, Sars, plague, cholera, etc.) knowing its lethality and deliberately causing the death of another by transmitting the disease, his action is referred to as intentional murder and is subject to retribution, and if the disease is not fatal and the carrier of the disease is not aware of the transmission of his disease to another, it is considered as intentional and is Paying the dowry and Arsh will be condemned, and finally, if a person is not aware of the disease and causes the death of another person by transmitting it, his action is considered a pure mistake, which is the responsibility of the Aqeela.

Discussion and conclusion:

Islam recognizes the right to health with the concept of preventive medicine and wants to establish a decent and desirable society, and it achieves this goal by providing the basic needs that guarantee the complete health of people at the community level. The patient should be aware of the treatment methods and drug side effects used during the treatment period. During the outbreak of epidemic diseases, including Corona, sometimes drugs used in the treatment of AIDS and hepatitis are used, and some of these drugs have long-term side effects for the patient. The doctor should inform the patient about this issue so that the patient can make an informed decision about his treatment. Also, doctors and other medical staff should do their best to provide the best services to patients.

Although it is not possible to provide a clear and decisive definition of health and the impact of health on various factors is undeniable, this does not mean that this right cannot be ignored in the provision of facilities by the government for a healthy life. Today, the government's commitments in the field of health, whether immediate and short-term or long-term, are

realized in three different areas. If in Iranian law, the upper documents, including the constitution, consider the right to health as a fundamental right and have addressed it; Therefore, the government, which implements these goals, should prepare a comprehensive plan and a broad and national horizon for it and strive to create suitable conditions for the access of members of the society, both Iranian and non-Iranian, in a crisis situation such as the corona virus. Therefore, the availability of health care, including medicine and medical equipment, is important for everyone. In addition, efforts should be made to provide social security insurances and supplementary insurances at an optimal level and with the highest standards, so that the right to health of people is guaranteed with these appropriate policies.

Since this right is clearly considered in the constitution, it necessarily promises the commitment of the government in adopting the general policies of the system in order to support this fundamental human right. One of the basic necessities in the internal laws that have increased people's enjoyment of this right is the lack of access of citizens and the exorbitant costs of the right to health, which should be taken into consideration by legislators to facilitate executive affairs.

On the other hand, health as a human right is an undeniable fact in the international system and in many human rights documents. Among these documents, we can refer to Article 55 of the United Nations Charter, the Statute of the World Health Organization, Article 25 of the Universal Declaration of Human Rights, Article 12 of the International Covenant on Economic, Social and Cultural Rights, Articles 4 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, Articles 11 and 12 The Convention on the Elimination of Discrimination against Women, Article 24 of the Convention on the Rights of the Child and Article 2 of the Universal Declaration of Islamic Human Rights were mentioned. In all these documents, the need to protect people's health is emphasized, and countries, as members of the international community, have committed to appropriate and adequate measures in times of war, force majeure, natural disasters, etc., which include prevention, treatment, and the provision of medical equipment and necessary drugs. During the crisis of infectious diseases such as influenza, corona, etc., they should act in order to secure and strengthen the right to health, and therefore the right to social security is directly related to the denial of any right to health and poverty. Therefore, supporting the right to health will directly lead to the provision and development of social and supplementary insurances, pharmaceutical items and medical equipment. It is better that a coherent management plan is implemented at the government level, which requires legal infrastructure that has the necessary legitimacy for the appropriate model during an epidemic of a specific disease or virus such as Covid-19. Some do not accept the right to have as a positive right and consider it as one of the goals that commitment is a political commitment and countries can implement it based on their economic situation. Another thing is that several laws should be passed in this field, and the countries involved in the disease should exchange their information on the level of treatment, appropriate drugs, and drug patents,

regardless of political conditions, with other countries so that they can bring the disease under their control as quickly as possible. and reduce its financial and human losses. Those examples of patients' rights, which are placed at the top of the normative hierarchy, are actually examples of the mandatory rules of general international law. As a result, the aforementioned examples are identified as irrevocable norms. Irrevocable norms are norms that governments and international actors in general cannot refuse to implement said norms by resorting to the causes and factors that justify responsibility, including countermeasures, legitimate defense, consent, etc.

In order to determine the position of the examples of patients' rights, we must consider two specific criteria: first, the relationship of the said rights with the rules governing the rights of dependence or non-dependence on international sources, and the second criterion among the various examples of the patients' rights, some of the said examples are actually in some way as an example. They are considered one of the binding rules of international law. These rights include: provision of adequate medical facilities, facilities related to patient transportation and training of specialist medical staff, which is directly related to the right to life of patients; Provision of appropriate and sufficient drugs for prisoners, defendants and incarcerated people in general, as well as provision of painkillers and sedatives for certain patients without strict restrictions under the pretext of fighting against narcotics and psychotropic drugs, which are directly related to the prohibition of torture and cruel and inhumane behaviors; Failure to classify patients based on race, gender, etc. .. and also providing medical and pharmaceutical services to all patients regardless of the type of illness and specific conditions of the patients, which are directly related to the principle of non-discrimination; Prohibition of preventing patients from leaving health and treatment centers due to non-payment of financial accounts, which is actually an exact example of the rule of prohibiting the imprisonment of people due to the inability to fulfill contractual obligations and the right to freedom; And finally, the right to conscious and free consent, which is the result of exercising the right to physical integrity.

Other examples of patients' rights are not considered as examples of mandatory rules, but it should not be overlooked that these examples have very little dependence on the existence of financial resources to provide and guarantee them; The mentioned examples are: the right to prosecution and demand for compensation for all the losses incurred (which, in the least possible case, the legislature can grant jurisdiction to the courts by passing special laws) the principle of confidentiality and respect for privacy; access patients to medical records and information; public participation in health and treatment policies; and finally, the use of the highest standard of treatment available. As a result, despite the fact that the above examples are not explicitly considered as examples of mandatory rules, but considering that some non-mandatory documents and procedures , like the interpretations of the Committee of Economic, Social and Cultural Rights, they have considered the mentioned examples as part

of the main obligations of the governments and considering the non-dependence of the mentioned obligations on the provision of financial resources, they have considered them irrevocable, it seems that this category of The rights of patients also have the capacity and talent to become an example of new mandatory rules in the international human rights space and specifically the rights of patients. As a result, we can expect that with the help of non-mandatory documents and norms in the space of international practice, the necessary convergence will be achieved in order to promote non-mandatory examples. It provided the rights of patients in the normative hierarchy of international law.

Currently, according to the presentation of the above content, the government refers to all the governing bodies that have duties in the field of providing security, well-being and health of the people according to the covenant made with the people within the framework of the Sharia and the Constitution, which are based on the relationship of citation, jurisprudence and legal proofs. In general, the government has the responsibility of ensuring the health of the members of the society. In sensitive times, especially as soon as infectious diseases spread, he has the responsibility of confronting and controlling rationally and religiously, and in this regard, he has many duties. As the guarantor of the people and the guarantor of rights and based on attention to public interests, the government is obliged, according to the principles of the constitution and in accordance with the sovereign authority, to use its all-round authority, especially by creating a crisis headquarters, and by mobilizing all the facilities and experienced manpower, to give timely and appropriate warnings. In order to raise awareness about the type of disease and its spread and how to maintain health until passing through critical conditions, against possible crimes (such as drug hoarding, theft of medicinal items, unfair distribution of drugs, etc.) and facilitating health conditions for the general public from their rights Protect during the outbreak of infectious diseases such as corona virus, monkey pox, Congo fever, etc.

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