

Legal Principles and Strategies to Encourage Citizens to Get Vaccinated against COVID-19 Virus

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ABSTRACT

Background: Following the outbreak of COVID-19 pandemic, in some countries, mandatory vaccination programs were put to practice. However, there were widespread opposition against vaccination, which is investigated in this research.

Methods: This was a descriptive-analytical research and data collection was conducted by referring to documents, books and articles in library.

Results: With the emergence of corona virus in the world and the need to end this dangerous pandemic, various countries, including Iran's legal system, decided to implement "compulsory vaccination" mechanisms. The findings of this study indicated that the government from the perspective of various schools (even the school of individual originality) was not only allowed to legislate rules to make vaccination obligatory, but also it was expected to enact appropriate laws to create public safety.

Conclusion: According to the principles of Islamic jurisprudence and law, including the priority of collective interests over the individual, the rule of no harm, and the authority of the Supreme Leader, the government is not only authorized but also obliged to enact laws for making vaccination obligatory.

Keywords: COVID-19, Right to Health, Vaccination, Quarantine, Patient Rights

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Introduction

After the outbreak of COVID-19 pandemic, to prevent the infection and death of the patients suffering from the virus, the government offered free vaccination to the general public, but some people in the community refused to receive the vaccine for various reasons. This situation raised an important question in the world's public opinion: does the government have the authority to make COVID-19 vaccinations mandatory through legal enforcement?

In the case of contagious diseases, people are not just faced with the interests of the sick person; rather, they deal with the interests of other people in the community who are exposed to the virus. Therefore, some believe that, according to the principles and rules that protect the public interest of society, the government not only has the authority to legislate the required laws, but is also obliged to use all its tools to maintain public health.

In this article, the authors will explain the principles and strategies for mandatory vaccination. Based on jurisprudence and legal principles and rules, the authors aim to discuss if the government enact binding laws and regulations to combat the spread of the coronavirus and cut its transmission chain through vaccination? If the answer to this question is yes, what measures can be taken in this direction?

Methods

This was a descriptive-analytical research, and data were collected by referring to documents, books and articles.

Results

In Iranian law, there are several cases of government authority which can make vaccination obligatory. Even if people do not accept the authority of COVID-19 national headquarters in accordance with Article 176 of the Constitution demanding citizens to be vaccinated, they can refer to the law of compulsory and general vaccination in the ordinary laws, approved by National Assembly in 1931, which is still in force.

Discussion

Jurisprudential principles of the obligation to vaccinate

1. Priority of public interest

Although the main goal is the reconciliation of individual and social rights, in cases of conflict between the rules of individual and public rights, there are criteria which resolve this conflict. Primarily, in the event of a conflict between the individual and society, each must assign part of its rights and powers to the other in order to create a balance between the individual and society rights (1).

In order for the government not to encroach on the rights and freedoms of individuals under the pretext of respecting and observing the public interest, it must provide clear rules and standards and act accordingly. Some of these criteria include “simultaneous attention to both worldly and otherworldly interests”, “attention to the general and comprehensive goals and motives of Islam to lead the society”, “not opposing the Shari'a”, “observance of the important and the most important principle”, “necessity and appropriateness”, “attention to the individual while prioritizing the interests of the society”. Therefore, according to John Stuart Mill the only purpose for which power can be rightly exercised against the will of the members of a civilized society is to prevent harm to others”, (2).

2. Competence of the just leader (Wali Faqih)

In Islam, only God has the right and authority to legislate fixed and unchangeable laws and can demand the worshipers to do or not to do something. However, according to many Shia jurists such as Imam Khomeini, in the era of absence, qualified jurists are successors of the Prophet and the infallible Imams in the implementation of government relations and issues and other matters which are the responsibility of the Imam (1). Accordingly, government is one of the basic rules of Islam and precedes all the other sub-rules, even prayer, fasting, and Hajj. The ruler can destroy a mosque or a house on the street route

and return the money to the owner (2).

Therefore, when the Supreme Leader came to the conclusion that it is necessary to restrict the individual's freedom, he demands them to be vaccinated. Accordingly, regarding the mandatory vaccination, a referendum was held by the Leader, who explicitly stated in response: "If the Islamic government announces regulations considering the public interests of the country, everyone must follow" (3).

Legal basics for obligation to vaccinate

1- Constitution

By following the Constitution of the Islamic Republic of Iran, principles related to the field of vaccination can be deduced. For example, according to Article 22, when non-vaccination of a group of citizens seriously endangers the lives of other citizens, the government must intervene and protect the lives of its citizens. Moreover, according to Article 40, no one can exercise her own rights as a means of harming others or violating the public interest. The obligation to vaccinate can be more clearly understood from this principle, as with other restrictions such as quarantine (2).

Another Article which can be interpreted as confirming the government's competence and authority to require the citizens to be vaccinated is Article 79 (2).

Accordingly, in the event of a pandemic such as COVID-19, an example of an emergency condition, the government can enforce precautionary measure of restricting the freedom of individuals for receiving the vaccine with the approval of parliament.

Ordinary rules

To have citizens vaccinated, several laws have been passed. The first law was the "Law on the Prevention of Sexually Transmitted Diseases and Infectious Diseases". In Article 16, smallpox vaccination was made obligatory to deal with "smallpox" disease, and monetary fines and three to seven days of imprisonment were considered the execution guarantee for the violators. Furthermore, Article 1 of "General and

Compulsory Vaccination Law" allowed the Ministry of Health to require public vaccinations mandatory to prevent and combat pandemics when necessary and appropriate. It seems that this law is currently binding and the Ministry of Health can easily invoke it. A law entitled "Law requiring the injection of tetanus vaccine for women before marriage" was passed. According to Note 2 of its single Article on other vaccinations (diseases other than tetanus), all the people are required to be vaccinated as determined by the Ministry of Health, Treatment and Medical Education within the specified period.

Strategies and guarantees to enforce general vaccination measures

As mentioned, the requirement of vaccination is considered to be among the duties of the legislator and the government; this is because the right to enjoy health is one of the fundamental, general and basic rights of individuals in society (2) and an Islamic society has the duty to take necessary measures in the community to protect this right (3). Therefore, any preventive and therapeutic activity to ensure the health of individuals is one of the duties of the government and paying attention to this right is more important for people infected with a contagious disease" (4).

In situations such as a pandemic, the government is responsible and obliged to compensate for the damage caused by its act or omission (4).

According to jurisprudential principles, the ruler can enact laws to protect public health, from warning to temporary deprivation of some social rights, financial fines, deprivation of public funds, and prohibition of employment and leaving the city or place of residence (5). In other words, the Islamic ruler can determine the appropriate punishment for any crime of any kind, and if non-vaccination is considered a crime, these types of punishments can be applied (6).

It should be noted that non-vaccination also has other effects and subordinate enforcement guarantees (6). For example, if a person is infected

with COVID-19 and transmits it to other people and causes harm, provided that all the conditions of civil liability are met (6), he/she will also be liable to pay damages to the infected person (7).

Conclusion

Even if people do not accept the authority of COVID-19 national headquarters in accordance with Article 176 of the Constitution demanding citizens to be vaccinated, they can refer to the law of compulsory and general vaccination in the ordinary laws, approved by National Assembly in 1931, which is still in force.

For proper enforcement, it is also possible to consider measures such as deprivation of social rights, employment ban, ban on the use of public vehicles and government facilities, and if necessary, heavier penalties such as monetary fines or imprisonment of those who violate this rule.

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Conflicts of interest

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Ethical considerations

Ethical considerations were carefully addressed and implemented in the research study, including obtaining informed consent from participants, ensuring their privacy and confidentiality, and conducting the study by relevant ethical guidelines and regulations.

Authors' contributions

This study was written by equal contribution of the two authors.

S. M. M and N. J, Contributed to the study concept and design; M. A, Data collection; M. A and A. V. M, Participated in collecting analysis, and interpretation of data; M. A and A. V. M, Article writing and Revision of the article; A. F. M, Review of draft article. All authors read and approved the final manuscript.

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