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# Infectious Diseases and the Social Responsibility of the Governance System in Improving Human Life

**Zahra Zandie<sup>1\*</sup>, Dr. Syed Mahmoud Mousawi<sup>2</sup>**

1. \* PhD Student in Department of Public Law, Faculty of Law, University of Qom, Qom, Iran, (*Corresponding Author*)
2. Associate Prof. in Department of Philosophy and Theology, Faculty of Philosophy and Ethics, Baqir al-Olum University, Qom, Iran, [smmusawi@gmail.com](mailto:smmusawi@gmail.com)

ARTICLE INFO		ABSTRACT
<b>Article History:</b> <i>Received: 11 February 2022</i> <i>Revised: 29 May 2022</i> <i>Accepted: 11 July 2022</i>		<b>SUBJECT AND OBJECTIVES:</b> Due to the outbreak of a virus from the corona family called Covid-19, which has infected millions of people around the world, the subject of the possibility or impossibility of Government responsibility for infectious diseases is a global issue. It is the Government's duty to act in order to improve human life, and this is in accordance with its existential philosophy. This debate originates from the capabilities and powers that are monopolized by Government. It is believed that, by resorting to the authority and discretions of a conventional Government, it can prevent the spread of many infectious diseases to a large extent and in case of negligence in performing tasks, must be liable. This is the initial question: Why should the Government be liable for infectious disease which it had no role in creating it?  <b>METHOD AND FINDING:</b> In this paper, by descriptive and analytical method and by collecting library resources, the continuity and relation between the responsibility of the Government and infectious diseases will be discussed. The Right to Life and the Right to Health are the basis of legal authority to intervene in the field of infectious diseases.  <b>CONCLUSION:</b> Public Law and Human Rights has a special view of infectious diseases and some statutes provide for Emergency Situations. Governments are committed to taking the most effective measures possible to prevent spread of infectious diseases. According to the findings of this study, during Corona, these liabilities for the Government can be enumerated: Identification, Determining the liable authorities and institution, Education, Responsibility for prevention and treatment, Establish and expand insurance protections, Compensation for victims, Judicial and political Responsibility. In Iran, it is necessary to design a comprehensive system for exceptional situations such as pandemics.
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<b>* Corresponding Author:</b> <b>Email:</b> <a href="mailto:zandie1991@gmail.com">zandie1991@gmail.com</a> <b>ORCID:</b> 0000-0002-5139-8018		<b>Article Address Published on the Journal Site:</b> <a href="http://p-l-journals.miu.ac.ir/article/7272.html">http://p-l-journals.miu.ac.ir/article/7272.html</a>
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## **Introduction**

The corona virus was first discovered in late 2019 in Wuhan, China, and was officially reported to the World Health Organization by the Chinese National Health Commission on January 12, 2020. (*China National Health Commission, 2020*)

The virus spread around the world quickly, which the World Health Organization described on March 11, 2020 as a pandemic or global epidemic. Since then, a full-scale struggle against humanity has begun. (*Ref: WHO, 2020*)

The World Health Organization defines infectious disease as: Infectious diseases are caused by pathogenic microorganisms such as bacteria, viruses, parasites,

or fungi. These diseases can be transmitted directly or indirectly from one person to another. Tuberculosis and various types of influenza, cholera, measles, SARS and Covid-19 are among these diseases. We must also be aware of the fact that Corona is not the last pandemic, and subsequent pandemics are on the way. About eight years ago, Ellen G.P. Ross and colleagues warned that the outbreak of the Ebola virus signaled another pandemic in the near future: As the Ebola epidemic slows, we need to think about how we can better prepare for the next pandemic. What is very important is the abundance of pandemics that have

occurred over the last few decades. (*Ross et al, 2015*)

The outbreak of various infectious diseases in the last decade proves this claim: Outbreak of acute respiratory syndrome (SARS) in 2007, Influenza A and H5N1 (bird flu) in 2007, H1N1 flu (swine flu) in 2009, Middle East Acute Respiratory Syndrome in 2012 and Ebola in 2014. Therefore, the incidence of pandemics is decreasing.

Governments have a primary liability to ensure that the risk of natural disasters is reduced, responded to, and improved in their territories. For example; the ruling of the European Court of Human Rights in the *Case of Budayeva and Others v. Russia* (2008) declared that

governments were liable for the loss and destruction of property caused by natural disasters.

Governments, on the other hand, have been forced to restrict the individual rights of a large number of their citizens in order to ensure the health of the people, maintain social security, and their survival, citing the rule of law. Under these circumstances, Governments tightly monitor public freedoms.

The premise of examining Government responsibility during an outbreak of coronavirus is that dealing with the disease at the national level requires a model of coherent, purposeful, and legitimate action. The examination of the issue is based on the assumption

that the performance of Governments must be in accordance with the requirements of the constitution and the rule of the constitution. (*Cambot, 1998*)

Now the question is why should the Government engage in a wide range of liabilities when an infectious disease occurs? Every day, Governments are very much looking for resources to retrieve their revenue shortfalls, so why should impose multiple liabilities on them when such diseases occur? This article will try to answer the above questions. In this regard, first, the social responsibility of the governance system in improving human life in dealing with infectious diseases will be examined.

After that, we will address legal documentation of Government liability for infectious diseases. Finally, we will explore the types of Government liabilities in the event of an infectious disease and Iran's assessment of this issue.

### **The Social Responsibility of the Governance System**

In the legal analysis of the theoretical foundations of this discussion, the important characteristics of corona should be considered: epidemic, highly contagious, with persistent symptoms and the possibility of death. (*Ghamami, 2020*) Given this crucial premise, the most important question that needs to be answered is: Why should the Government

be logically liable in the event of a pandemic?

One of the basic analyses may be that whenever the occurrence or spread of the disease is related to two or more factors, some of which are normal and some of which are related to human or organizational (abnormal) error, the abnormal factor should be responsible for compensation. (*Ref: U.S. v. Montrose Chemical Corp, 1995*)

In addition, according to the theory of "Social Contract" that was introduced to public opinion in 1762 by Jean-Jacques Rousseau- by joining to this contract, citizens cede part of their freedoms to the Government and demand security in return. Security in this sense means

the security of body and mind, and therefore when people are harmed by a social phenomenon, the Government is obliged to protect the health and lives of people, according to the obligation under this contract.

In the case of Corona, the principles of Government accountability relate to the principle of the need for Government intervention in cases of public interest. Philosophically, the right to life, the right to health and the right to security and a safe environment underlie the legal authority to intervene in infectious diseases.

Explaining the theoretical framework, control of infectious diseases requires public health interventions, which often violate the rights of

individuals. This is unavoidable, as such diseases can spread from one infected person to another. Thus, we need to have a clearer understanding of the moral dilemmas regarding the prevention and treatment of infectious diseases and the control of such diseases, in respect of individual rights in the face of public protection. As a result, there is a fundamental tension between individual rights and the protection of public health and well-being in the prevention, treatment and control of communicable diseases. (*Phua, 2013*)

If the quantity and quality of restrictions on the guarantee of fundamental rights are such that the principle of a democratic system is overshadowed and

in practice the political regime changes from a rule of law to an authoritarian system, the actions taken will not be easily justified, because without the guarantee of fundamental rights, even the Constitution will not make sense. Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution. (*Declaration of the Rights of Man and of the Citizen, 1789, Article 16*)

In this section, we will explain the various principles that justify the Government's liability for infectious diseases.

### **1. The Right to Life**

The right to life as the most fundamental human value will have the consequence of human rights that no

other rights or basic human values can take precedence over the value of life. Life is morally the most fundamental element of human value. Life in this view seems to be the source and origin of other values. Now, if life is a right, the question will be: Who is liable? Human rights are claims and demands that require an obligation to guarantee and respect them. Lawyers believe that human rights are in fact legitimate demands and claims against the Government, which requires the Government to be obliged to respect human rights. *(Ghari Syed Fatemi, 2016)*

In answer to the question of whether the right to life is a positive or negative right, it should be said that

if we consider the right to life as the only negative right, then the scope of this right includes only the prohibition of murder. The essence of the negative right is summed up in the prohibition of others about it. Thus, the commitment of the Government, as the main obligation in protecting the negative rights of others, is to confront those who seek to take the lives of others or even their own lives. The analysis of the right to life in the theoretical framework of the negative right is a very minimal analysis of this right. From such a right, it is difficult to imagine a commitment and obligation for the Government, the individual or other members

of society to take welfare, health or even educational support measures in support of the individual's life. (*Ref: Paust, 2014; Ghari Syed Fatemi, 2016*)

One of the considerable principles in justifying the benefit of individuals from the minimum health is the analysis of the right to life as a positive right. An analysis according to which the Government is committed to protecting the lives of citizens not only against actions that violate the principle of life but also in the form of protective measures to guarantee life. Therefore, it can be said that the Government, as the main obligor in this human right, is obliged not to violate this right on its

own, nor to allow others to commit such violations. On the other hand, it is committed to take positive measures to preserve and ensure the lives of its citizens. Based on such analyses and theoretical foundations, the Government's liability in the matter of Corona can be proved.

All in all, the right to life is the most fundamental human right, and other rights enshrined in international human rights instruments stand by it. This right is so important that it cannot be ignored even in an emergency. (*ICCPR, 1966: Article 4*)

The right to life in disturbed situations may be endangered or violated. Failure to provide the necessary provisions in dealing



with those who violate the right to life of others is itself a violation of this fundamental human right. Also, the lack of Government support for certain individuals or groups or leaving the hands of certain groups and individuals in attacking the lives of others are other manifestations of the violation of the right to life. Therefore, in the case of Corona, the Government has a positive duty to protect the right to life of individuals in society and will be liable if it fails.

## **2. The Right to Health**

The right to health, as one of the examples of the second generation of human rights, requires the intervention and positive actions of the Government because individuals

alone are not able to protect their health. Without health protection, people will not be able to enjoy many individual and economic freedoms they have been given. This right can include a variety of issues related to public health.

The World Health Organization, with the help of the High Commissioner for Human Rights, has interpreted the right to health enshrined in the Universal Declaration of Human Rights and the Covenant on Economic and Social Rights, and enumerated elements for it. In general, the right to health includes the following components: *(Ref: WHO and OHCHR, 2008)*

- The right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups: Access must be non-discriminatory, and especially the most marginalized and vulnerable sections of society must be able to access and benefit from goods, services and health centers, both legally and in practice.

- Comprehensive right to health: We frequently associate the right to health with access to health care and the building of hospitals. This is correct, but the right to health extends further. It includes a wide range of factors that can

help us lead a healthy life. They include: Safe drinking water and adequate sanitation, Safe food, adequate nutrition and housing, Healthy working and environmental conditions. (*WHO and OHCHR, 2008*)

- The right to enjoy: This right emphasizes the right of citizens to a health care system based on providing equal opportunities, The right to prevent, treat and control the disease, The right to access essential medicines, The right to timely and equal access to basic health services, education and health information and to participate in health decision-making for all.

- Getting rid of degrading and unsatisfactory behavior: This aspect emphasizes the liberation from treatment without patient consent, such as the prohibition of experiments and research without consent. In this regard, Article 7 of the *International Covenant on Civil and Political Rights (1966)* explicitly prohibits medical and scientific experiments on human beings without their full knowledge of the limits and scope of the experiment: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific

experimentation. On the other hand, the United Nations has adopted the principles of medical ethics regarding the role of health workers and has issued guidelines to protect prisoners and detainees from inhumane treatment and punishment. (*UNGA, 1982*)

- Social Determinants of Health: It means the conditions in which people are born, grow and live, work and grow old. These situations are shaped by the distribution of money and wealth, power and resources at the global, national and local levels. (*WHO, 2017*) For example, there is a significant correlation between poverty and

communicable diseases.

The map of areas living on less than \$ 2 a day is consistent with the malaria and tuberculosis distribution map. (*Alsan et al, 2011*)

Poverty leads to poor nutrition and health, ignorance, lack of adequate health care, and large-scale political instability, which are the best conditions for the spread of infectious diseases. On the other hand, infectious diseases cause serious damage to the economic situation, social unrest, political instability and poverty. (*Ebrahimgol et al, 2021*)

The exercise of the right to treatment, based on the principle of self-determination and autonomy, is in a

situation where the individual's illness does not harm others or public health or is not contagious. Thus, Treatment of patients with Covid-19 is mandatory, either with the informed consent of the individual or by force; Because this disease is contagious and if the infected person refuses, it will cause the spread of the disease, the violation of the right to health of others and public health. (*McConnell, 2000*)

Therefore, based on such interests, the Government has a moral and legal obligation to treat all patients appropriately based on their right to receive medical and rescue interventions. Suspension of the informed consent of individuals regarding an

ordinary illness is contrary to the fundamental principles of human rights, such as respect for the dignity, independence, freedom of will, the principle of self-determination, and patients have the right to refuse treatment, but in situations like the Corona pandemic outbreak, Life-saving therapeutic interventions are imposed on patients by the Government to protect public health benefits. (*Byrn, 1975*)

The protection of public health is one of the basic duties and responsibilities of the Government, so whenever it is threatened, the Government can, according to the law, ignore the consent of patients who threaten public health. Of course, these impositions must

be in compliance with the laws, Islamic rules and human rights, along with judicial supervision, compensation and providing the basic necessities of life for the patients. (*Khosravi, 2020*)

It is important to note that the right to health, like other human rights, is a duty for Governments to their citizens. Governments' commitment to the right to health, like other human rights, is realized at three levels: Respect refers to the negative aspect of Governments' commitment and means the Government's refusal to intervene directly or indirectly negatively in the right to health. The duty to protect the right to health has a positive aspect and means the Government's

positive intervention for third parties from violating the right to health of others. In this approach, the Government is obliged to provide the necessary health education using the correct and valid education content. Provide all sections of society, monitor the quality of food or medicine production, avoid air and water pollution. The duty to fulfill the right to health means the duty of the Government to create the conditions for people to have the right to health and take the necessary measures to meet the needs of individuals regarding health, which is often done in the form of comprehensive and detailed plans. In this regard, the Government is obliged

to take measures to implement the executive budget, judicial budget and etc, to realize and enforce these rights. (*Eide et al, 2001*)

Whenever a state's public order is compromised in terms of security, health, and public service delivery, Governments use tools to prevent, manage, reduce, and compensate. These tools are used at different levels in emergency situations. For example, the first coronary heart disease in Italy was registered in late January 2020, and then in a short time, especially in the north of the country, the spread of the disease became very large. The situation was such that by the end of April; ie in three months, the number of infected

people reached 200,000 and more than 25,000 people were reported dead. Hence, Italy had one of the most critical conditions among the countries of the world. To deal with this unprecedented catastrophe, the Government decided to use the tools of emergency legislation provided for in Article 77 of the Constitution. (*Gatta, 2020*)

*The Government shall not, unless properly delegated by the Chambers, issue decrees having the value of law. (Italy's Constitution, 1947: Article 77)*

Accordingly, Countries have used three models of mild, moderate, and severe or authoritarian restraint based on two specific legislative or compliance with general

requirements, including general emergency requirements, to combat coronary heart disease. In creating a state of emergency, a set of legal principles must be observed. These principles include some aspects of the legal system, including the principle of continuity and the principle of conformity in the provision of public services and some refer to public rights and freedoms, including the rule of law, the principle of proportionality and the principle of precaution.

Paying attention to these principles can, on the one hand, regulate crisis management and, on the other hand, prevent gross violations of legitimate rights and freedoms, especially personal information

and privacy, through the constitutional and administrative proceedings. *(Ghamami, 2020)*

In addition, according to Islamic rules and the meaning of the rule of “Saving the System”, matters that are secondary as required to maintain order, are obligatory and what disturbs the system is forbidden. The purpose of the system is not only the system of Government but also social order. *(Nobahar, 2019)*

It should be noted that when a democratic state goes into a state of emergency, it practically and apparently loses its difference from an authoritarian system, because both consider the interests of the Government to be

superior to the fundamental rights of individuals. Thus, in a state of emergency, in order to differentiate, systems based on the rule of law are obliged to strike the best possible balance between conflicting principles; including the rights of individuals and the interests of Government or the community. *(Jalali and abouata, 2020)*

Therefore, when declaring and implementing an emergency regarding a health crisis such as an infectious disease, it is necessary that the measures taken be specifically to prevent the disease, prevent its spread, and care for patients. For this reason, it is believed that the use of methods such as isolating patients and especially



mandatory quarantine of suspects who violate the right to freedom of movement should be the last resort and if there is no possibility of voluntary quarantine. (*Shu-Acquaye, 2017*)

According to the doctrine of “Due Diligence”, Governments are required to control infectious diseases, regardless of whether the threats come from the activities of public or private institutions, legal or non-legal actions, or natural disasters. The prevalence of Covid-19 has these characteristics and its harmful consequences against public health have been scientifically proven. Therefore, Governments are committed to taking the most effective measures possible to prevent its

spread and prevent the formation of similar diseases. (*Dias and Coco, 2020*)

Due diligence is one of components of Good governance that assess the extent of the Government's response to threats, or damage and Requires Governments to prevent, stop and compensate for domestic and cross-border damage. Commitment to identifying threats and disseminating information by Governments in the event of an outbreak of a contagious disease is one of the main requirements of the due diligence doctrine during the outbreak of Covid-19. (*Ghasemi and Akefi Ghaziani, 2021*)

## **Legal Documentation of Government Responsibility**

Different legal systems have adopted different ways to control infectious diseases. In some countries, an epidemic is considered an emergency situation. Some countries, using comprehensive health laws that cover a variety of health issues, and have expressed Government liability in the event of an epidemic. Some countries also have special rules for infectious diseases. The following are the most important legal documents to deal with Covid-19.

### **1. Internal Legal Documents**

In the Iranian legal system, there are various documents in the Constitution and ordinary laws that can be applied to special circumstances

such as the coronation. In this part of the article, we will examine these legal documents on how the Government deals with infectious diseases.

In the Iranian legal system, Article 79 of the *Constitution of the Islamic Republic of Iran (1989)* states:

*In case of war and similar emergencies, the Government has the right to temporarily impose the necessary restrictions with the approval of the Islamic Consultative Assembly, but its duration may not exceed thirty days and if the need remains, the Government is obliged to obtain permission from the parliament again.*

Also, Articles 210 and 211 of the *Rules of Procedure of the Islamic Consultative Assembly (2000)*, approved on 2000/04/08, have formulated provisions in line with the application of Article 79 of the Constitution:

- Pursuant to Article 79 of the Constitution, in case of war and emergency, such as when the government has the right to impose the necessary restrictions with the approval of the Islamic Consultative Assembly, before imposing the restriction, the full text of the necessary restrictions with the necessary justifications, together with the bill submitted to the parliament for consideration. (*Article 210*)

- Consideration of the bill is a necessary limitation of a council and, if approved by the parliament, its implementation period may not exceed thirty days. If the need remains after the expiration of this period, the government is obliged to obtain permission from the parliament again. (*Article 211*)

Due to the allegorical nature and comparability of the corona situation with war, the corona situation can be an example of a state of emergency. The state of war has characteristics that by extending them to other conditions and their abolition of the nature of war, it can be said that the current coronary state also

has those characteristics. The first feature of war is the general threat, and the Corona virus undoubtedly carries this threat, because according to statistics published by various institutions, it has severely endangered the life of human society. The second characteristic of war is its spread, and the corona virus has this characteristic too. Therefore, the current corona situation, both in terms of risk and prevalence, can be an example of an emergency situation. So, it should be noted that Article 79 of the *Constitution (1989)*, stating “*State of war and a state of emergency like it*”, considers a high threshold for the imposition of

necessary restrictions. *(Mohebbi and Karami, 2016)*

In a general definition, a “State of Emergency” is a situation to contain the imminent dangers of governance and to restore public order or security and public health to protect the existence of a country. This is a Government statement that suspends some of the normal functions of the executive, the legislature, the judiciary and non-Governmental organizations. Such declarations are usually made in the event of natural disasters or crises and civil unrest or after the declaration of war, or the state of international or domestic armed conflict. *(Ghamami, 2020)*

Regarding the mechanisms of monitoring the announcement and establishment of the necessary restrictions, it can be said that in the Iranian constitution, both mechanisms of legislative supervision and judicial supervision have been used. According to Article 79 of the *Constitution (1989)*, any imposition of necessary restrictions by the Government is subject to the approval of the Parliament. In addition, if the Government imposes the necessary restrictions without the legal permission of the parliament, anyone can revoke the decisions and actions of the Government in imposing the necessary restrictions, which are contrary to the

order provided in Article 79 of the Constitution, from the Court of Administrative Justice to demand.

Regarding the basis of the Government's authority to impose certain restrictions on contagious diseases such as coronary heart disease, in addition to Article 79 of the Constitution, Article 176 of the *Constitution (1989)*, which is the subject of the "Supreme National Security Council" may be argued. In explaining national security, it is stated:

*National security in a semantic sense means the negation of the threat and is diverse in terms of territory and includes different types in the context of time.*

This principle of the Constitution, without imposing any particular restrictions on the exercise of the Council's competence, gives the Council ample opportunity to confront all kinds of internal and external threats in order to safeguard the national interest and protect the Islamic Revolution and its territorial integrity and national sovereignty.

Now, considering that the corona is a national and public threat and endangers public health, its confrontation can be considered in order to ensure national security, and the fight against it in the current situation can be considered as national interests. Thus, the extensive and interpretable capacity of Article 176 regarding the

powers of the Supreme National Security Council in the face of a variety of threats, including threats to public health, has enabled the Government to establish a “National Anti-Corona Headquarter” through its approval and through this headquarters, impose some restrictions; Of course, in order for the council to pass, it must be implemented by the approval of the highest official of the political system (the leadership).

In addition to the constitutional capacity, other laws have found ways to combat infectious diseases. According to the range of consequences of the spread of infectious diseases and the resulting damages to individuals and communities,

the fight against infectious diseases is classified as a matter of Government. For this reason, in paragraph “k” of Article 8 of *act Civil Service Management (2007)*, the legislator considers the promotion of health, public education, control and prevention of diseases and epidemics as the duties of the Government (Sovereign acts). The Government intervenes in these matters, citing its authority and powers.

An examination of the relevant laws and regulations shows that infectious diseases, in the event of a general outbreak, are considered examples of crisis and therefore appropriate measures should be taken to deal with them.

Paragraph “A” of Article 1 of the *Law on the Establishment of the Crisis Management Organization of the Country (2008)* defines the crisis as:

*It is a situation that arises suddenly or uncontrollably as a result of natural and human incidents, events and actions; except in the case of security and social issues, and causes hardship to a human community and resolving it requires urgent and extraordinary measures.*

Article 12 of the law stipulates:

*In the event of natural disasters and unforeseen accidents, the Government is allowed to provide the equivalent of one and*

*two tenths of one percent of the general budget each year from the intended location.*

In addition, Article 688 of the *Islamic Penal Code (2012)* has the appropriate capacity to criminalize acts that pose a threat to public health. According to this article, those who threaten public health will be sentenced to imprisonment, and it is up to the Ministry of Health and other responsible institutions to determine this.

The *Act of Prevention of Sexually Transmitted Diseases and Infectious Diseases (1941)*, focuses thematically on infectious diseases, but this law, in terms of antiquity, does not meet the needs of today in a wide-

ranging issue such as Corona with its unlimited effects.

Therefore, the Iranian legislative system has a series of general provisions regarding the diseases and medical status of the country, and therefore, there is no specific strategy for dealing with biological weapons and pervasive diseases such as Corona and this is a serious weakness for effective and lawful action. In this regard, it is necessary to approve in accordance with the principle of the rule of law, security and safety of citizens' health. Also, necessary mechanisms should be designed to comply with Article 79 of the Constitution. (Ghamami, 2020)



## **2. Documentation of the International Commitments**

Under the provisions of the *International Covenant on Civil and Political Rights (1966)*, all persons have the inherent right to life, No one shall be arbitrarily deprived of his life and this right must be protected by the domestic law of the States (Article 6), Failure by Governments to implement public health policies could lead to violations of this right. Governments have a positive duty to protect and guarantee the right to life and are required to take the necessary measures to protect the lives of individuals and prevent their lives from being endangered in their own land. This includes providing emergency medical services

as well as managing accidents and emergencies in situations such as communicable diseases.

*The International Covenant on Economic, Social and Cultural Rights (1996)*, recognizes the right of all persons to the enjoyment of the highest attainable standard of physical and mental health (paragraph 1 of Article 12). In order to achieve this important goal, Governments are required to prevent, treat and combat infectious, endemic, occupational, etc. diseases (paragraph 2 of Article 12).

In many international instruments, including Article 11 of the *European Social Charter (1996)*, Article 16 of the *African Charter on Human and Peoples' Rights*

(1981), as well as Article 10 of the Additional *Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* (1988), emphasize the right to health in a similar literature. (Asgharnia, 2016)

All Governments, in the full realization of the right to health, are required to strive and make maximum use of available resources. This commitment includes the adoption of national health policies in line with the health needs of all members of society and the implementation of necessary measures to prevent, control and treat infectious diseases. (Dias and Coco, 2020)

Therefore, Governments that do not take the necessary measures to prevent the outbreak of Covid-19 are likely to be in breach of these international obligations. (Ghasemi and Akefi Ghaziani, 2020)

A central and historic responsibility for the World Health Organization (WHO) has been the management of the global regime for the control of the international spread of disease. Under Articles 21(a) and 22, the *Constitution of WHO (1946)* confers upon the World Health Assembly the authority to adopt regulations designed to prevent the international spread of disease which, after adoption by the Health Assembly, enter into force

for all WHO Member States that do not affirmatively opt out of them within a specified time period. (*IHR, 2005: Foreword*)

So, this Constitution, includes health commitments, the violation of which could give Governments international liability. Paragraph 3 of Article 3 of these regulations (*IHR, 2005*) states the implementation of these Regulations shall be guided by the goal of universal application for the protection of all people of the world from the international spread of disease. In addition, in accordance with Article 5 of these regulations, Governments have a responsibility to develop

and maintain infrastructure to monitor the reporting and announcing public health crises.

In general, it should be said that countries have resorted to various ways to deal with the corona crisis, which does not necessarily fall within the scope of the state of emergency. For example, Germany has used *Infection Protection Act (2001)* to control the Corona pandemic, despite the existence of both a “State of Tension” in Article 80, and a “State of Defense” in Article 115. (*German Constitution, 1949*)

### **Types of Social Responsibility of the Governance System**

According to lawyers, a wide range of tasks and liabilities should be considered

for the Government at the time of the outbreak of infectious diseases and especially at the time of the outbreak of Covid-19, which are mentioned below:

### **1. Identification**

Identification is the first step in planning to support human groups in an epidemic situation. In other words, the first step is to identify the prevalence of a pandemic or infectious disease and to announce the specific situation that arose from it. In addition, vulnerable groups should be monitored and recorded based on accurate information systems. Through the creation of information networks, Government support guidelines are developed and made available to Government

agents. (*Habibnezhad and Ameri, 2020*)

### **2. Determining the Liable Authorities and Institution**

One of the most important steps in exceptional situations, such as a corona pandemic, is to determine the authorities or institution responsible. The principle of access to liable authorities, if important in normal situations, is crucial in special circumstances. Laws governing emergencies must designate liable authorities and enumerate the scope of their authority. The appointment of these officials makes them accountable to the people if they do not perform their duties. As mentioned earlier, the institution liable for policy-making and coordination of

actions on the issue of Corona is the *Corona National Headquarter*, designed with the approval of the Supreme National Security Council. (*Mozaffari and Mirzaei Moghadam, 2020*) Also, the implementing body of the announced policies are various institutions of the country, including the Ministries (especially the Ministry of Health) and the military force and police.

In general, coherent and focused management in various crises and emergencies is one of the important principles that through this coordination, service distribution and needs are met more equitably and efficiently and waste of resources will

be prevented. (*Habibnezhad and Ameri, 2020*)

### **3. Education**

Education is an important tool for reducing crisis risk in the context of Hyogo action. (*World Conference on Disaster Reduction, 2005*)

According to which, the use of knowledge, innovation and education to build a culture of safety and flexibility at all levels is considered as one of the main priorities. According to this framework, the effects of crises are reduced when people are well aware. In this regard, the collection and dissemination of knowledge and information about hazards, vulnerabilities and capacities is a priority, especially for vulnerable people. Furthermore,

providing scientific and transparent information by using psychological capacities to persuade those who refuse treatment has special importance.

#### **4. Responsibility for Prevention and Treatment**

Pursuant to Article 12 of the *International Covenant on Economic, Social and Cultural Rights (1996)* and General Theory 14 of Covenant on the Prevention and Treatment of Covid-19, the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (Ref: *CESCR, 2000: General Comment*)

The steps to be taken by the States Parties to the

present Covenant to achieve the full realization of this right shall include those necessary for:

- The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child
- The improvement of all aspects of environmental and industrial hygiene
- The prevention, treatment and control of epidemic, endemic, occupational and other diseases
- The creation of conditions which would assure to all medical service and medical attention in the event of sickness
- Apply useful and effective immediate treatments

commensurate with the right to treatment and health

- Establishment of adequate medical, health and psychotherapy centers
- Free or low-cost treatment of patients, especially for vulnerable groups
- Fair and non-discriminatory behavior in the distribution of health and medical facilities
- Declaring a state of emergency in the event of a widespread outbreak of the disease and imposing restrictions on certain rights and freedoms
- Perform tests and screenings to find patients
- Suspension of informed consent of patients and detainees refusing treatment or quarantine

- Compulsory treatment of all patients in compliance with human rights and legal standards

- Epidemiological surveillance includes controlling an infected or suspected person, without restricting a person's freedom of movement, as well as conducting health and epidemiological tests on the individual

- Cleaning and disinfecting virus-infected areas

- Adopt policies for prevention, control and treatment of the disease and criminalizing Corona publishers

- Compulsory quarantine of patients in medical centers or private homes. (*Ref: Ameri and Habibnezhad, 2020*)

### **5. Establish and Expand Insurance Protections**

Providing insurance and support services to vulnerable groups and victims of crises such as the Corona Pandemic is essential. According to Article 29 of the *Iranian Constitution (1989)*:

*It is universal right to benefit from social security in respect of retirement, unemployment, old age, disability, being stranded, absence of a guardian, accidents, and from health and medical services and care provided through insurance or other means. The government must provide the afore-mentioned services and financial support for every individual citizen by drawing, in accordance with law, on national*

*revenues and funds obtained through public contributions.*

Accordingly, having social security insurance is a public right. This principle emphasizes the protection of people involved in accidents and people in need of health services in the form of social security insurance. Providing the minimum basic necessities, including adequate food, drinking water, shelter and medical and health items, for the general public and especially the vulnerable during the outbreak of infectious diseases, is an important liability of today's Governments.



## **6. Compensation for Victims**

Corona has greatly affected all aspects of human life, including biological, health, economic, cultural, and social dimensions. One of the most important aspects of this pandemic is the huge financial losses to various businesses and only Governments can compensate them, due to the scope of its authority and resources available. In Iran, for example, the Corona National Headquarter has taken a number of decisions to support businesses: (*Center for Presidential Strategic Studies, 2021*)

- Deferment of bank installments
- Employer premium deferral

- Deferment of water and electricity costs
- Postponement of gas costs
- Postponement of municipal costs
- Fixing the effect of returned checks
- Providing lower interest rate loans with a three-month grace period for affected businesses
- Forgiveness of tax debt offenses
- Automatic renewal of licenses
- Social support aimed at reducing the social effects of the corona economic shock. (*Ref: Mahra, 2020*)

## **7. Judicial and Political Responsibility**

Along with the existence of various liabilities for the Government, it is possible

to speak of its judicial responsibility in case of negligence and non-negligence. For example, the Government's failure to close its air and land borders in a timely manner, or its failure to promptly announce the arrival of the coronavirus in the country, could lead to judicial liability on the part of the Government.

In addition, in exceptional circumstances, such as the outbreak of the Corona Pandemic, the suspension of human rights is one of the solutions envisaged in legal systems in order to strike a balance between human rights and freedoms on the one hand and for the benefit of the public on the other. Although conditions are envisaged in order to

prevent the possible abuse of Government powers in recognizing the necessity or non-necessity of suspending the rights of individuals, due to the freedom of action of states in recognizing this issue, independent oversight of Government actions is necessary. Therefore, due to the important role of an independent judiciary in protecting the human rights of individuals, judicial oversight of the process of limiting or suspending human rights or Government negligence can be crucial. *(Eghbali, 2019)*

In addition to the judicial liability of the Government, we can talk about its political liability. Politically, Governments are under the

control of formal and informal observers. For example, parliamentary control of the Government, along with the tools of questioning, impeachment, inquiry, ombudsman, and most importantly, public control on Government, are forms of political control.

### **Assessing the Iranian Legal System in Social Responsibility of the Governance**

As mentioned earlier, the Iranian legal system; both the Constitution and ordinary law has the capacity to predict specific circumstances, such as the coronary condition. Monitoring the Government when an infectious disease occurs is an important issue that should be addressed in the

legal system. In such cases, the Government gives a lot of power to itself by resorting to the higher interests of society, and then continues to violate many of its obligations regarding the rights of individuals. Therefore, monitoring the performance of the Government will be necessary.

Regarding the mechanisms of monitoring the declaration and application of emergency situations, it can be said that both legislative monitoring and judicial monitoring mechanisms have been used in the Iranian Constitution. According to Article 79 of the *Constitution (1989)*, any necessary restrictions imposed by the Government are subject to the approval of

the Islamic Consultative Assembly and the approval of the relevant law in the Guardian Council. In addition, if the Government imposes the necessary restrictions without the legal permission of the Parliament, anyone can revoke the decision and actions of the Government in imposing the necessary restrictions, which are contrary to the procedure provided for in Article 79 of the Constitution.

As long as this legal solution serves the interests of the political system and the nation, all governing institutions are obliged to accept this legal solution. But Constitution, by anticipating guardianship of Faqih, has given him the authority to act in situations where this

legal solution does not serve the interests of the country and the people or going through the legal process requires wasting time and losing more public interests. In such a situation, he acts with his authority to solve the problem that has arisen as a result of the emergency situation. This authority of the Supreme Leader in the Iranian constitution can be considered similar to the model of extra-legal actions; Of course, it should be noted that the Supreme Leader's exercise of extraordinary powers is extra-legal, not illegal, because it is done under specific criteria and with the aim of providing materials that the law is

unable to provide. (*Mohebbi and Karami, 2016*)

Some legal systems, such as the United States legal system, anticipate different levels of emergencies and disasters, and for each of these levels, a mechanism for announcing it by the Government and the President has been established. In addition, the Federal Emergency Management Agency has specific assistance, budgets, and assistance programs for each disaster level. The anticipation of these different levels of emergencies is not reflected in Iranian regulations and is all referred to as an emergency or crisis.

Due to the importance of determining the level of emergencies for planning

and service delivery, as well as the type and extent of Government intervention in various emergencies, determining the different levels of disasters and the mechanism for declaring each one in Iranian regulations can better reflect the rights and liabilities of local and central institutions in different emergencies. (*Farrokhi, 2017*)

The lack of legal control on the Government and executive bodies in the event of the declaration or non-declaration of emergency status is another shortcoming of Iranian regulations; However, separation of powers and the need for Government freedom of action in emergencies are cited as reasons for this

uncontrollability, but issues such as the need to respect human rights, the need to compensate for disasters or Government misconduct, as well as the right of local authorities to object to the central Government, challenge this uncontrollability.

In Iran, according to Articles 10 and 12 of the *Law on the Organization and Procedure of the Court of Administrative Justice (2003)*, if there is an illegal restriction or disqualification in an emergency, the Court of Administrative Justice can investigate the matter; Of course, the review of this court is not automatic and relies on litigation. Nevertheless, it is not possible to file a lawsuit regarding security and

socio-political issues, of which the Supreme National Security Council is the competent authority, according to the note of Article 12 of this law. Therefore, in Iran, where the National Corona Headquarter has been established as a sub-council of the Supreme National Security Council in accordance with Article 176 of the *Constitution (1989)*, it is out of the administrative proceedings of the Administrative Court of Justice. (*Ghamami, 2021*)

It is important to anticipate specific regulations in environmental protection that are not mentioned in the regulations. For example, in the case of Corona, sanitary waste and repeated use of disinfectants caused

a lot of environmental damage, and it is appropriate for Iranian law to provide a legal solution to the effects and consequences of the actions of the Government and the people.

### **Conclusion**

In this article, we address the important question of why Government should be socially responsible in the event of a pandemic. What is this social responsibility and how is it exercised? It was explained that philosophically, the Right to Life and the Right to Health are the basis of legal authority to intervene in the field of infectious diseases.

The Right to Life is the most fundamental human right on which the implementation of the rights

enshrined in international human rights instruments depends. This right is so important that it cannot be ignored even in an emergency. The right to life in disturbed situations may be endangered. Failure to provide the necessary provisions in dealing with those who violate the right to life of others is itself a violation of this fundamental human right. Also, leaving the hands of certain groups and individuals in the attack on the life of others is another manifestation of the violation of the right to life. Therefore, in the case of Corona, the Government has a positive duty to protect the right to life of

individuals in society and will be liable if it fails.

The Right to Health is another principle of Government responsible for infectious diseases. According to the doctrine of due diligence, Governments are required to control infectious diseases, regardless of whether the threats come from the activities of public or private institutions, legal or non-legal actions, or natural disasters.

The prevalence of Covid-19 disease has these characteristics and its harmful consequences against public health have been scientifically proven. Therefore, Governments are committed to taking the most effective measures possible to prevent its spread and

prevent the formation of similar diseases. The protection of public health is one of the basic duties and responsibilities of the Government, so whenever it is threatened, the Government can, according to the law, ignore the consent of sick people who threaten public health.

According to the findings of this study, during Corona, these liabilities for the Government can be enumerated: Identification, Determining the liable authorities and institution, Education, Liability for prevention and treatment, Establish and expand insurance protections, Compensation for victims, Judicial and political liability.



In Iran, as in some countries, apart from some limited and scattered legal provisions, there is no special scheme to deal with biological weapons and epidemic diseases such as Corona, and this is a serious weakness for effective and lawful action. In this regard, it is necessary to design a comprehensive system for special conditions and exceptional situations such as pandemics, firstly to ensure the safety and health of citizens and secondly to comply with the principles of the Constitution, especially Article 79 of the Constitution and related mechanisms.

Decision-making constitutes the nature and philosophy of the state, and the state

cannot and should not be completely taken by surprise in the face of natural, social, economic, and health crises such as the corona. Rather, it must make the right decisions with foresight while strengthening the agility of its structures and based on citizen participation.

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### **AUTHOR BIOSKETCHES**

**Zandie, Zahra.** *PhD Student in Department of Public Law, Faculty of Law, University of Qom, Qom, Iran.*

✓ Email: [zandie1991@gmail.com](mailto:zandie1991@gmail.com)

✓ ORCID: [0000-0002-5139-8018](https://orcid.org/0000-0002-5139-8018)

**Mousawi, Syed Mahmoud.** *Associate Prof. in Department of Philosophy and Theology, Faculty of Philosophy and Ethics, Baqir al-Olum University, Qom, Iran .*

✓ Email: [smmusawi@gmail.com](mailto:smmusawi@gmail.com)

✓ ORCID: [0000-0003-3764-9316](https://orcid.org/0000-0003-3764-9316)

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