

MANAGEMENT OF THE DEAD UNDER ISLAMIC LAW



Many civilizations and religions regard death as a transitional period, bridging one stage of life with another. Handling mortal remains with respect is essential to protect the dignity of the dead and to show respect for the feelings of loved ones who are still alive. Islamic law contains many rules to that effect, which must guide the actions of forensic specialists, including during armed conflict and other situations of violence.

SEARCHING FOR AND COLLECTING DEAD BODIES

Early Islamic sources describe a longstanding practice among warring parties of accounting for dead bodies. *Hadīth* (the reported sayings, deeds and tacit approvals of the Prophet Muhammed) and *Sīrah* (biographies of the Prophet) literature contain accounts of the repatriation of the dead and of the documentation of fatalities in every military engagement.

DISPOSAL OF DEAD BODIES

Early Islamic sources indicate that mortal remains must be given proper burials, in order to protect them from the depredations of wild animals and to enable relatives to visit the graves.

Mortal remains of Muslims

Islamic law developed detailed rules for disposing of the dead bodies of Muslims. Burying the dead is a collective obligation (*farḍ kifāyah*) on all Muslims. Accordingly, early Islamic sources also show that Muslims conveyed the dead bodies of Muslim soldiers to their families for burial.

Islamic law contains a separate body of rules for disposing of the body of a martyr¹. While most jurists agree that the rules concerning martyrs also apply to those killed while fighting Muslim forces, the following three rules are applicable only to martyrs:

- There should be no ritual washing of the body.
- The body should not be shrouded and should be buried in the same clothes in which the martyr died.
- No funeral prayer should be offered over the body.

These rules remain common practice today.

Mortal remains of non-Muslims

After a military engagement, if an adverse party does not collect and bury its own dead, it becomes the Muslims' obligation to do so, to protect the dignity of the dead and show respect for their families. Failure to do so would be tantamount to mutilation, which is prohibited under Islamic law. Some classical Muslim jurists also argue that burying dead bodies belonging to the adverse party serves the public interest (*maṣlahah*) of Muslims, as it protects public health.

Collective graves

The general rule in Islamic law is that every dead body should be buried in a separate grave. In particular, classical Muslim jurists agree that Muslims and non-Muslims should be buried in separate graves, as is still the practice in some countries. Several exceptions exist however permitting the use of collective graves in some cases:

- During armed conflicts or natural disasters – or in other circumstances when it might be impossible to have separate graves – Muslim jurists permit the use of collective graves (for two or three bodies at a time).
- The dead bodies of men and women should be buried separately; if necessity dictates otherwise, classical Muslim jurists say that the bodies should be separated by a barrier of dust.
- Collective graves for dead bodies, usually from the same family, are now common in many Muslim countries because of a lack of space and/or the costs of digging individual graves.

Decent burial without adverse distinction

In Islam, all people are born in a state of nature (*fiṭrah*). When people die, there is no longer any justification for enmity or hostility towards them. This implies decent burial of mortal remains without distinction. Islamic law therefore prohibits discriminating between Muslims and non-Muslims, and between those who have taken part in hostilities and those who have not.

Burial of severed limbs

Under Islamic law, respect for human dignity requires that severed limbs be buried, regardless of whether the person in question is dead or alive. *Ḥanbalī* jurists add that they should be buried next to the grave of the dead person in question, or in the same grave but without uncovering the dead body to reassemble it. In Islam, disposing of severed limbs by cremating (*ḥarq*) them, or through any other means besides burial, is an offence against human dignity.

Cremation

Islamic law and Muslim societies regard burial in the ground as the proper way to show the necessary regard for dead bodies; cremation is prohibited because it is thought to violate the dignity of the human body.

Quick burial

Islamic law expresses a general preference for quick burial, but does not expressly regard it as compulsory (*farḍ/wājib*). However, the primary Islamic sources do not state a time frame for burial. A few cases can be highlighted:

- Where foul play is suspected, the burial should be postponed until the body can be examined.
- Where a person's death is in doubt – for example, when someone is comatose – some jurists are in favour of waiting for a day and a night (*yaūm wa laylah*), to confirm the fact of death.

1 A martyr (*shahīd*, plural *shuhadā'*) is someone who is killed while fighting non-Muslim enemy belligerents.

- According to some jurists, burial can also be postponed until the arrival of the dead person's relatives.

The preference for a quick burial does not change when a dead body is unclaimed or unidentified; the requirement of respect still applies. Therefore, out of respect for dead bodies, Muslims are likely to bury unclaimed or unidentified bodies quickly.

Prohibition against mutilation

Mutilating the dead bodies of an enemy is strictly prohibited (Qur'an 16:126-127), after the cessation of hostilities and at all other times. According to the jurist *Ibn Ḥazm* (d. 1064), failure to discharge the obligation to bury the bodies of enemy soldiers or to return them to the adverse party is tantamount to mutilation.

BURIAL AT SEA

For deaths that take place at sea, classical Muslim jurists envisaged three possibilities:

- If a ship can reach harbour before the body is in a state of advanced decomposition, then burial should be postponed.
- If that cannot be guaranteed, the body should be tied to pieces of wood and lowered into the sea; the hope here is that the waves will take the body to the nearest shore inhabited by Muslims, who will give it a respectful and dignified burial on land.
- If, however, the body is likely to reach shores inhabited by enemies – who might desecrate it – it should be attached to or enclosed in some heavy material and lowered into the sea, preferably with protection against predatory marine life.

EXHUMATION OF HUMAN REMAINS

In classical Islamic legal texts, the term *nabsh al-qubūr* is used broadly to describe the exhumation of graves: no distinction is made between exhumation for legitimate and illegitimate purposes (robbery, for instance). Arabic words for the exhumation of graves have a negative connotation in many Arabic-speaking societies because they are associated with crime; for example, the word *nabbāsh* is understood to mean “grave robber”. Additionally, the principle of respecting the dead is understood under Islam as militating against exhumation. Accordingly, classical Muslim jurists agree that exhuming graves is prohibited except when absolutely necessary.

However, precedent suggests that it is acceptable to exhume bodies in order to transfer them from collective to individual graves. It can also be argued that precedent indicates that Islamic law permits the exhumation of dead bodies to transfer them to their places of origin, and/or to establish the identity of the person in a grave.

Classical Muslim jurists also considered the exhumation of graves for the following purposes:

- Religious purposes (i.e. the rights of God): jurists tend to accept exhumation for the purpose of performing the ritual washing of the body (but not for shrouding it), for offering the funeral prayer over the body, or for turning the body to face the Qibla (i.e. Mecca).
- Civil liability cases (rights of humans): all valuable items on a dead body must be legally transferred to that dead person's heirs, in the proportions prescribed by Islamic law. Therefore, graves can be exhumed to recover personal belongings and valuables (such as gold or money) that were buried with the body in order to transfer them to the dead person's next of kin. Likewise, the rights of the living with regard to ownership of land prevail over dead people's right to respect: so, a landowner can require that a body buried in usurped land be exhumed and removed from that land.
- Considerations of public interest: these are often legitimate grounds for exhuming graves, for example to build public roads or if the graves have been flooded.

AUTOPSIES

An autopsy, or post-mortem examination, is the dissection of dead bodies for educational or legal purposes. This practice was not unknown in Islamic history. Some jurists found the use of autopsies for educational purposes acceptable, but others considered it impermissible in Islamic law. The Arabic word *tashrīḥ* (“anatomy” or “autopsy”) itself evokes lurid images of callous vivisection. Today,

significant numbers of people in Muslim societies still reject autopsy because it disfigures, and hence desecrates, the body, or because it delays burial of the dead (see above).

Discussions among Islamic legal scholars about the permissibility of autopsies reflect a tension between the principle of respecting dead bodies and the legal imperative of identifying the cause of death or the demands of science or education. Based on the principle of *maṣlaḥah* (public interest) and the Islamic legal maxims *al-ḍarūrāt tubīḥ al-maḥzūrāt* (“necessity overrides the prohibition”) and *ikhtiyār akhaf al-ḍararayn* (“choice of the lesser of two evils”), most legal authorities in Muslim countries do permit autopsies both for criminal investigations and for scientific and educational purposes. In Muslim countries, autopsies are usually conducted by specialists in forensics departments that are attached to either the ministry of justice or the ministry of health. And where autopsies are completely rejected, exceptions are made – pursuant to a court order – when foul play is suspected and the person’s relatives want to know the cause of death.

HANDLING OF DEAD BODIES BY MEMBERS OF THE OPPOSITE SEX

The handling of dead bodies by forensic specialists of the opposite sex should, in principle, follow the same Islamic principles that guide the examination of patients by medical professionals of the opposite sex. In brief,

- Muslim women should be examined by female Muslim medical professionals;
- If no female Muslim medical professionals are available, then by trusted female non-Muslim medical professionals;
- If no female medical professionals are available, then by male Muslim medical professionals;
- If no male Muslim medical professionals are available, then by male non-Muslim medical professionals, as a last resort.

When a Muslim woman is being examined by a male medical professional, her husband or a *maḥram* (a relative with whom marriage is prohibited) should be present, in order to avoid *khalwah* (seclusion of a non-*maḥram* man with a woman), which is prohibited.

These rules for the examination of Muslim women also apply for the examination of Muslim men. However, these rules yield to necessity, based on the Islamic legal maxim *al-ḍarūrāt tubīḥ al-maḥzūrāt* (“necessity overrides the prohibition”). Hence, examination by medical professionals of the opposite sex may be acceptable when professionals of the same sex lack the necessary expertise or when there is a lack of trust in their abilities. For instance, it would be appropriate for female health personnel to treat wounded and sick men during an armed conflict when male personnel are not available in sufficient numbers. Similarly, the requirement that the spouse or a *maḥram* be present during an examination does not apply to accidents and other medical emergencies.



MISSION

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