

## Jurisprudential Rulings Related To Burying A Muslim's Body In The West: Health And Safety Of The Hearts In The Life And Death Of A Muslim

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### ABSTRACT

This research shed light on problematic issues faced by Muslims living in the Western world, including members of the Saudi community. In the west, buying a graveyard or a tomb entails significant costs of hard currency. Whoever does not have the money for a grave, competent authorities cremate his body, then throw his ashes into a sea, or send it to his family. Furthermore, the family afford the coffin's costs because burial in the ground is banned in the west, unlike Muslim countries. Such an issue is subjected to specific Islamic rulings that this research addresses. KSA is distinguished from any other country regarding that matter as it pays great attention to community members abroad. Whoever dies, precise procedures and excellent follow-up from the Kingdom's embassies in countries around the world take place, based on what is dictated by the basic system of the Saudi regime.

### THE RESEARCH OBJECTIVES ARE

- 1- Developing a set of jurisprudential rulings related to burying the body of a Muslim in the West.
- 2- Presenting a set of proposals that contribute to alleviating the problem.
- 3- Proving the greatness of Islamic law in honoring the dead by burying him and hiding his body in the ground.

This research required adopting the inductive analytical approach which based on developing the juristic rulings of burying the bodies of Muslims who died in Western countries. The research provided a number of significant findings which will be elaborated at the end and it emphasize that the original rule is that if a Muslim dies, his body must be buried in Muslims' cemetery, not in a cemetery belongs to people of other faiths, such as Christians, Jews, and Buddhists. It is the duty of Muslims who live in the West to join hands to establish their own cemetery. Otherwise, the body of a dead Muslim must be transferred to his own Muslim homeland or to the closest Islamic land. The research also concluded a set of relevant important proposals presented at the end.

**Keywords:** Burial - Funeral – The West – Transmitting.

### 1. INTRODUCTION

Islamic jurisprudence has proven its wide flexibility and its ability to find solutions to any problem throughout history. It also proved the unique ingenuity of its jurists in diagnosing problems and finding appropriate Islamic solutions, in light of its established texts and its jurisprudential and 'Uṣūlī rules. The *Ijtihādī*<sup>1</sup> mentality of the jurists contributed to a clear ingenuity in adapting emerging issues, extracting jurisprudential texts from the views of the Imams of *Ijtihād*, and making good use of all of that in clarifying the legal rulings related to these issues. All of these rulings serve par excellence for human health, contribute to the sustainable development of societies, and support economy.

<sup>1</sup> *Ijtihād* is the Arabic word for "effort," which describes the process of independent thought, combined with an understanding of the Quran, required to make proper judicial decisions or Islamic legal verdicts. It is a part of Islamic law and jurisprudence, which is defined as legal philosophy, or *Fiqh* in Arabic. *Ijtihād* deals with legal questions not raised directly in the Quran.

This research, entitled the “*Jurisprudential rulings related to burying a Muslim’s body in the West*”, is of great significance as it sheds light on problematic issues faced by Muslims living in the Western world, including members of the Saudi community. Buying a graveyard or a tomb entails significant costs of hard currency in the west. Whoever does not have the money for a grave, competent authorities cremate his body, then throw his ashes into a sea, or send it to his family. Furthermore, the family afford the coffin’s costs because burial in the ground is banned in the west, unlike Muslim countries. Such an issue is subjected to specific Islamic rulings that this research addresses. KSA is distinguished from any other country regarding that matter as it pays great attention to community members abroad. Whoever dies, precise procedures and excellent follow-up from the Kingdom’s embassies in countries around the world take place, based on what is dictated by the basic system of the Saudi regime.

The Islamic law is characterized by a senior system for burying the dead. It is keen to preserve his rights, and considered that honoring him is to bury him quickly, after cleaning, ritual washing, shrouding, and anointing his body, then participating in funeral prayer, and making sure to make supplication for him and ask for forgiveness shortly after the burial moments. Moreover, *Sharī’ah* forbids assaulting the dead body in any form. According to *Sharī’ah*, the dead person must be entered to his grave in a complete and honorable corpse, with which there is no room for cutting out part of his organs, let alone cremation and turning him into ashes. Cremation in the Western world, either upon the will of some people, or upon the competent authorities’ commands due to inability to cover the costs of buying a plot is a remnant of the distorted faiths that Westerners adopt. The matter which doubled their efforts to collect money, even by cremating the bodies of their dead citizens. Muslims who live in the West may be subjected to this abnormal situation if they are poor or destitute or cannot afford the required costs, in case that there is no special cemetery for Muslims in those Western lands.

## 2. STATEMENT OF THE PROBLEMS AND QUESTIONS

This research addresses a prime question: What are the jurisprudential rulings related to burying a Muslim’s body in the West?

Branching out from this main question is a number of sub-questions that are closely related to clarifying the conditions of a Muslim if he dies in the West, the availability of specified cemeteries for Muslims, the impact of the financial situation on providing a cemetery, the Islamic rulings of what happens in the West in terms of cremating the bodies of those who are unable to pay the costs of grave and funeral, and a set of other rulings and suggested solutions related to the topic.

## 3. REASONS FOR CHOOSING THE TOPIC

**Reasons can be summarized in three points:**

The first is the urgent need to develop a number of jurisprudential rulings related to burying the bodies of dead Muslims in the West.

The second is proving the greatness of the Islamic law in honoring human beings alive and dead.

The third is the spread of the cremation phenomenon in the Western world.

## 4. RESEARCH OBJECTIVES

**The most important objectives of this research are as follows:**

- 1- Serving the research orientations of Najran University regarding the contemporary jurisprudential issues discipline.
- 2- Developing the jurisprudential rulings related to burying the bodies of dead Muslims in the West.
- 3- Presenting a set of valuable proposals for some cases of Muslim individuals in the West.

## 5. LITERATURE REVIEW

After careful research and investigation by the researchers, within the limits of and scopes their sources, they found some excerpts of articles related to the topic, but they do not live up to the level and content of this research.

## 6. THE APPLIED SCHOLARLY APPROACH

This research required adopting the inductive analytical approach which based on clarifying the jurisprudential aspects related to burying the bodies of dead Muslims in the Western world, and presenting a set of related proposals.

## 7. RESEARCH PLAN AND PROCEDURES

This research consists of an introduction, four sections, a conclusion, proposals, an index of topics, and another index for sources and references as follows:

**Introduction:** contains a summary of the research, a statement of its significance, problems and questions, the reasons behind choosing such a topic, the research’s objectives, the literature review, the applied scholarly approach and the research’s plan.

**Section one:** clarifying the vocabulary of the research title.

**Section two:** the Western system of burying the dead.

**Section three:** conditions of burying a Muslim's body in the West.

**Section four:** suggested solutions to avoid cremation of a Muslim's body if costs are unaffordable. These are eight solutions.

**Conclusion:** contains the most important findings and proposals of the research.

**Index of topics.**

**Index of sources and references.**

## 8. SECTION ONE

### Clarifying the vocabulary of the research title

The proposed title for this research is: "*Jurisprudential rulings related to burying the body of a Muslim in the West*". This requires clarifying the vocabulary that make up such a title.

- 1- **Jurisprudential rulings:** it include developing what is obligatory, recommended, prohibited, disliked, or permissible related to the death of a Muslim in the West, and the burial process and procedures that follow.
- 2- **Burying the body of a Muslim:** burial is decently hiding a dead body in the ground in order to prevent the corpse from being preyed upon by wild animals.

Linguistically, burial indicates mystery and concealment which is achieved in the burial process because a deceased body is placed in a deep earthen pit, whether the hole is a ditch-grave i.e., a slit in the middle of the grave, or it is a niche-grave i.e., a side border, by creating another hole above the main hole towards the direction of the *Qiblah*<sup>2</sup>, which is more recommended in the Sunnah. Both (ditch and niche graves) are permissible by consensus. The Prophet, PBUH, said, "*The niche-grave is for us and the ditch-grave is for the People of the Book*". As for mystery, this is because it surrounds the state of a dead person while he is in his grave. The pleasure or torment that happens to him are among the matters of the unseen that Muslims believe in, but their truth is hidden and mysterious that human minds fail to comprehend.

Terminologically, burial means "hiding under the ground", which is completely consistent with the linguistic definition of the word.

What reinforces the meaning of concealment regarding the dead is that whoever is in charge of washing him is obligated to cover and hide any defects or bad effects that appear on the facial features. The only exception to the issue of concealment is what is related to carrying a dead person, as it is recommended to carry him on shoulders so coffin appears to people for the sake of remembrance. What Westerners do by exaggerating in hiding coffins and carrying them in dark private cars is contrary to the guidance of the Prophet's Sunnah in this regard. This is due to hardness in their hearts and fear of death because of feeling of negligence their duties towards Allah. As for a Muslim, seeing a coffin carried on shoulders reminds him of the afterlife and prepares him for this momentous situation.

- 3- **Lands of the West:** What is meant by the Western world, whether American or European, are nations that belong to distorted or false faiths such as Christianity, Judaism, atheism, or Buddhism. Terminologically, Muslim jurists call such lands the abode of disbelief, which is the abode in which disbelief prevails.

**Imam Ash-Shawkānī stated:** "considering the prime faith; if disbelievers prevail in a land to the extent that Muslims cannot publicly express their faith only if they have been authorized to do so by the disbelievers, then this is an abode of disbelief. Practicing some Islamic manifestations has no consideration, as long as it is not practiced owing to Muslims' power, but rather owing to infidels' permission".

This is exactly what applies to those who live in the West, whether by choice or due to a necessity, as they live under control of non-Islamic regimes which have absolute authority over their native and foreign nationals, and everyone is governed by the same laws. Muslims cannot practice their religious rituals except with an official permission, such as building mosques, calling to prayer publicly, performing Eid prayers, or slaughtering sacrifices. Burial according to Islamic law is also included in this framework, as Muslims must buy their own burial plots.

In conclusion, it is important to develop the Islamic ruling of burying the body of a Muslim in a non-Islamic country if it is not possible to send the body to his homeland, or sending the body the closest Islamic country neighboring the Western country. In addition, it is critical to clarify the Islamic ruling if it is not possible to have a cemetery specified for Muslims in the lands of the West. All of this is in order to avoid burials in mixed cemeteries with people of distorted faiths, and to prevent the body of a dead Muslim from being cremated if he is unable to pay the costs of a burial plot, under a contradictory system in the Western world that will be further detailed in the following section.

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<sup>2</sup> The *Qiblah* is the direction towards the Ka'bah in the Sacred Mosque in Mecca, which is used by Muslims in various religious contexts, particularly the direction of prayer. pg. 123

## 9. SECTION TWO

### The Western system of burying the dead

The original ruling of burying a dead in the ground is that the process must be free and that people must not be burdened with paying money to governments for obtaining burial plots in which to hide dead bodies. In this regard, all people are equal, and clearance is the original ruling, thus they must be exempted from any compensation. From time of Adam, people still bury their dead in cemeteries for free. No scripture commanded people to buy their graves before death, or to ask their families to do so after death. Thus, taking these financial returns is consuming people's property wrongfully. Allah says "*And do not consume one another's wealth unjustly...*" [Al-Baqarah: 188].

Unfortunately, Western countries normally mandate people to buy their cemeteries, and no one can be buried except for payment. Whoever is unable to pay has a very strange fate, as his body is cremated in special high-temperature ovens. When corpse turns into ashes, the crematorium delivers the ashes to the family of the dead person to bury them in their homes' gardens. Otherwise, ashes are thrown into a sea, river, or faraway places outside cities. Every Western country has specific laws in this regard, all of which are united by mandating payment for burial.

A researcher named Muhammad Nabil monitors an example of what is happening in one of the European countries, namely Germany, and stated: "the prices of graves and their legal framework vary according to the German states. There are two types of graves, and each grave has a different price. Graves that can be renewed once after 20 years: their price reaches 865 euros in Berlin. The cost of extending the period for an additional twenty years is 500 euros by the family of the deceased. As for non-renewable graves, their price in Berlin reaches 788 euros, and a deceased family pays about 1,950 euros for the burial process."

This Western system includes everyone, even Muslims who live in these countries, which consider such financial returns to be a type of taxes that people pay in exchange for benefits they receive during their lives, such as public parks, paving roads, and landscaping, including burying their bodies under the ground. It is a purely materialistic view that indicates cruelty, greed, and injustice, especially if someone is unable to pay, as his corpse ends up being cremated until the corpse turns to ashes.

As for going into the details of cremation there, it is beyond the scope of imagination. In an article in which the writer Ilham At-Talibi mentioned: "The body is cremated without relatives present. The crematorium employee is tasked with pressing one of the buttons in a small metal box on the wall. The coffin is placed in the oven, and then cremated. The process takes an hour until the coffin and the human remains inside turn into ashes. Knee joints are broken and placed in an urn. This is according to the German Deutsche Funk Kultur newspaper."

### In sum, the Western system is based on two abominations regarding burying dead:

The first is consuming people's property wrongfully.

The second is cremating bodies of those who are unable to pay burial expenses and funeral procedures in high-temperature ovens.

Islamic legislation absolutely rejects these two abominations, as its texts guide mercy, help, and compassion, and consider that honoring a dead is burying him. Rather, it warns that attacking the body of a dead is the same as attacking the body of a living. In an authentic ḥadīth, the Prophet, PBUH, said, "*Breaking a deceased body's bones is exactly like breaking them when he is alive*".

**Al-Mazharī stated:** "His saying: "*is exactly like breaking them when he is alive*" means that: just as breaking a living man's limb is a sin, so is breaking a dead person's bone, because it is belittling and humiliating human, which is prohibited, neither in life nor in death."

What Westerners do of cremation to the corpse, crushing its bones, placing the ashes in iron or wooden bags or coffins, then scattering them in air or sea is the maximum of contempt and humiliation. This alone is enough for a Muslim to realize the danger of living in the West, especially if his financial situation is weak, as he is very vulnerable to this shameful fate that is not worthy of human dignity on the one hand, and the value of a Muslim on the other hand. There are many cases that take place to a large number of Muslims living in the West, and each case has its special ruling, which is discussed in the next section.

## 10. SECTION THREE

### Conditions of burying a Muslim's body in the West

The original ruling of burying a Muslim's body is that it should be buried in Islamic lands where Muslims are dominant, and in whose countries the Islamic law is applied, and where Muslims have well-known cemeteries in which their dead are facing the direction of *Qiblah*. A set of Islamic rituals must take place when a Muslim dies, beginning with ritual washing, shrouding, perfuming the body, and performing funeral prayer on him. In addition, a collective obligation (*Fard kifāyah*) on

the Muslim community to carry the body to his grave, and to draw closer to Allah by attending his funeral, carrying his coffin, praying on him, directing his face to the *Qiblah* in grave, and praying for him to be steadfast after the burial. All these procedures are religious rituals that *Sharī'ah* is distinguished by and are not known to anyone who does not believe in Islam, its rulings, morals, and virtues.

Muslim jurists unanimously agree that the body of a dead Muslim must be buried in a cemetery belonging to Muslims. They also agreed on prohibiting burying a dead Muslim in non-Muslims' cemetery, or burying a dead non-Muslim in Muslims' cemetery.

**This consensus was narrated by more than one scholar, including:**

- a) **Ibn Ḥazm Al-Andalusī stated:** “tradition of the people of Islam since the time of Allah’s Messenger, PBUH, is that a Muslim must not be buried with a non-Muslim”. Citing such permanent and continuous tradition is tantamount to true consensus, and if Ibn Ḥazm narrates something related to consensus, adherence to it should be strong and solid, given that he does not accept many of the consensuses claimed by a number of jurists. If he acknowledges a consensus, it must be based on extrapolation and indifference to jurists who disagreed with him.
- b) **An-Nawawī stated:** “Jurists, may Allah have mercy on them, agreed that a Muslim must not be buried in non-Muslims' cemetery, nor must a non-Muslim be buried in Muslims' cemetery.”

**Such consensus narrated by these two great jurists has implications, the most important of which are:**

- 1- A Muslim is distinguished by being buried in a cemetery belongs to those of the same faith, monotheism, and *Sharī'ah* of him. Therefore, it is prohibited to bury a dead Muslim in a cemetery of those who disbelieved in Allah and His Messenger, and did not accept Islam as a religion.
- 2- Whoever opposes Allah and His Messenger and disbelieves in them is dishonored by not buried with one who is content with Allah as Lord, Islam as religion, and *Sharī'ah* as a judge.
- 3- Achieving distinction between monotheism and polytheism even after death.

**Based on the above, let it be known that Muslims living in the Western world have two situations:**

**The first is:** when they have their own cemeteries in which only Muslims are buried. Some Western countries, as an investment, allow the sale of burial plots to Muslims so that they can bury their dead according to Islamic law. If a Muslim dies in such circumstances, his relatives have a choice between two options:

- a) To bury his corpse in Muslims' cemetery. It does not matter that it is located in the West, as the point is that it is only for Muslims and the dead of other faiths do not share it with them.
- b) To send his corpse to his Muslim homeland or to the closest neighboring Muslim land.

**The researchers give priority to (a) option due to the following:**

i Burying him immediately after his death in Muslims' cemetery in the West fulfills the order to hasten the burial of a dead. Quick burial of a dead is an honor to him, as this avoids negatives from occurring. These negatives include some changes that may occur to the body after death, such as swelling and changing features, especially in countries where temperatures are high, or if there are insufficient means to refrigerate dead bodies. The evidence of giving priority to quick burial is the ḥadīth of Abū Hurayrah in which the Prophet, PBUH, said: “Walk quickly at a funeral, for if the dead person was good, it is a good condition to which you are sending him on, but if he was otherwise, it is an evil of which you are ridding yourselves”.

ii Burying him in Muslims' cemetery in the West corresponds to burying him in Muslims' cemetery in Muslim lands. Both are two cemeteries whose identity is Islamic and both take the same Islamic rulings. What is fearful that a Muslim would be affected by non-Muslims in his life is avoided after his death, thus, no basis for prohibition any more.

iii Sending him in a coffin to his homeland via plane, ship, bus, or other means entails a seeming delay to the recommendation of quick burial, exposes the body to change, and is super-expensive. Many people cannot afford shipping dead bodies to their homelands, so do their families. Therefore, it is lawful to be buried with Muslims in their special cemetery.

An exception to this may be given to wealthy Muslim people who or whose relatives have no problem in terms of costs, or if a Muslim land is adjacent to the Western country. In such cases, transporting the corpse is preferable due to its ease from both financial and geographical standpoints. Burying a Muslim in a Muslim cemetery located in an Islamic land then takes precedence over burying him in a Muslim cemetery located in a non-Islamic land. “An interest with two benefits should take precedence over another interest with only one benefit”.

The second situation is: when Muslims do not have their own cemetery, and the Western country in which they live allows them to be buried in its cemeteries in exchange for financial costs determined by their competent authorities.



**Here are the details to be explained as follows:**

- a) If the dead Muslim bequeaths property, a portion must be deducted to cover the costs of shipping his body to his homeland or a nearby Muslim country. His heirs are prohibited to divide the inheritance except after deducting these costs and debts, then they are permitted to distribute their deceased's inheritance according to the legal rulings. Such deduction is required because it is a right for the dead person and is used for the costs of shrouding etc.

**Al-Māwardī stated:** "The most superior rights in a deceased estate are his shroud and burial supplies. It takes precedence over the rights of Allah Almighty and the rights of people, even if it exhausts his entire estate". An-Nawawī approved this ruling with consensus. Yet, Ibn Ḥazm considers that the repayment of debts takes precedence over paying for shroud and the like, and therefore the expenses of shroud and so on are collective obligation on the Muslim community.

The researchers give priority to what is established by consensus which is paying for the shroud and the burial supplies take precedence over repaying the deceased debts. If it is left to the heirs to determine either to repay debts or pay for the shroud and burial supplies, perhaps they may refuse to do any, especially the Westerners, who are predominantly materialistic, and they might prefer the free cremation, out of greed towards the inheritance.

- b) If this dead Muslim was poor and did not bequeath money. In this case, Muslims must provide costs of the coffin and shipping of their brother's body to his Muslim homeland. It is permissible to use the *Zakāh* money in this regard, because this dead person is categorized under the *Needy Traveler* who deserves getting from *Zakāh* money. The purpose of giving *Zakāh* to a *Needy Traveler* is to bring him to his homeland, where his family and community are. The ruling does not differ from the case of a deceased Muslim who died in the West, so *Zakāh* is spent to him in order to transport his body to his homeland. Ibn Rushd stated: "A *Needy Traveler* must be given what brings him to his homeland". Giving money to a dead in this case is impossible, so *Zakāh* money should be given to the one who undertakes the ritual washing for the dead, shrouding, and transmitting him to his Muslim land.
- c) If the deceased, his heirs, and the surrounding Muslims have no money. A Muslim may be living alone in one of the villages of remote Western cities, and has no contacts with Muslims living in the same lands. If such a person dies, the high cost of preserving his body in mortuaries may force the competent Western authorities to cremate the body and turning it into ashes. This is, in fact, a dreadful doom for living in non-Muslim lands, and the Islamic law has been strict in prohibiting it. There are many texts regarding that, including:

i Alla's saying, "Indeed, those whom the angels take [in death] while wronging themselves - [the angels] will say, "In what [condition] were you?" They will say, "We were oppressed in the land." They [the angels] will say, "Was not the earth of Allāh spacious [enough] for you to emigrate therein?" For those, their refuge is Hell - and evil it is as a destination" [An-Nisā': 97]. This is a general text in which there is a severe rebuke to those who abandon migration from the land of disbelief to the land of Islam, and this is unanimously agreed upon by jurists. Ibn Kathīr stated in his exegesis: this honorable 'Āyah was revealed about those who reside among the idolators, while able to perform *Hijrah* (i.e., migration) and unable to practice the faith. Such people will be committing injustice against themselves and falling into a prohibition according to the consensus and also according to this 'Āyah.

ii The ḥadīth that was reported by Jarīr Ibn 'Abdullāh Al-Bajalī in which the Messenger of Allah, PBUH, said, "Any Muslim who stays among the polytheists, does not belong to me". The disavowal of the Prophet, PBUH, from those who stay among non-Muslims involves severe threat. Whoever the Prophet, PBUH, disavowed, would be deprived of success and a good ending, and that is enough of a calamity in a Muslim's faith.

In conclusion, lack of money to bury a dead Muslim and Islamic charities' inability to do that lead Westerners in their lands to cremate the body and turn it into ashes. Cremation is prohibited under Islamic law, and whoever of the non-Muslims undertakes the cremation process is sinful. Allah will punish them for their true polytheism, and for its consequences of these heinous acts. This is why scholars of 'Uṣūl agreed that non-Muslims are addressed by the branches of *Sharī'ah*. This is supported by Allah's saying: "Those who do not give *zakāh*, and in the Hereafter they are disbelievers." [Fuṣṣilat: 7].

**Imam Ash-Shanqūfī stated:** "Some scholars of 'Uṣūl have inferred from this noble verse that non-Muslims are addressed by the branches of *Sharī'ah*. This is because Allah declared in this verse that they are polytheists, and at the same time they are disbelievers in the Hereafter.

Therefore, He threatened them with woe for their polytheism and disbelief in the Hereafter, and for not paying *zakāh*, whether we interpret that *zakāh* in the verse as the well-known *zakāh* of money, or *zakāh* of bodies by doing good deeds and avoiding sins".

However, Muslims are in urgent need for seeking useful solutions in order to avoid cremation of dead Muslims, that will be discussed the next section.

## 11. SECTION FOUR

### Suggested solutions to avoid cremation of dead Muslims if costs are unaffordable

There are some effective solutions that a Muslim should pay attention to, including the following:

- 1- Burying a deceased Muslim in the garden of his house. This is undoubtedly permissible, as the garden belongs to its Muslim owner, and what is established by jurists is that owing a land involves its ground. Al-Khaṭṭābī stated: “Whoever owns a land, owns the entire bottom of it”. Such permissibility is indicated by the fact that it does not entail any prohibition, and many Westerners bury their dead in the gardens of their houses, and because burying it in the backyard is a reason for the dead person to be close to his family to pray for him.

The problem remains if the house is rented and not owned. In this case, burial in the garden is considered an infringement on the lessor’s property by doing an act that owners do not normally permit, unless the lessee Muslim obtains permission from the landlord.

- 2- Burying the deceased Muslim secretly in a remote place in wilderness or a desert where no people or on deserted mountains, provided that no harm affects his Muslim relatives, friends, or acquaintances who make it. When questioned about him, they could resort to *Tawriyah* (i.e., concealment of truth without telling a lie through using multi-connotative statements). Such behavior is permitted by *Shari’ah* to avoid the harm of cremation. In an authentic narration on the authority of ‘Umar Ibn Al-Khaṭṭāb, may Allah be pleased with him, he said: “Indirect speech accords great scope in avoiding lies”. Abū ‘Ubayd stated: “Indirect speech is using multi-connotative statements without telling a lie, so the listener is deluded. This is often used in speech.”
- 3- Resorting to financial aid, even if it comes from churches. Some charities, churches, and municipalities in Western countries usually afford parts of the burial costs. There is nothing wrong if a dead Muslim benefits from such subsidies just like all other citizens and foreigners who pay taxes regularly throughout their lives. By reviewing their clean tax record, they are entitled to benefit from financial subsidies that cover to some extent the inability of covering the costs.

### Evidences of the permissibility of benefiting from this financial aid are as follows:

i To avoid cremation, which is more harmful than the humiliation of a Muslim when seeking help from a non-Muslim. The juristic legal maxim states “*If two harms conflict, committing the minor of which takes precedence over the major*”.

ii A gift given to Muslims by non-Muslims. Al-Bukhārī included in his *Ṣaḥīḥ* a chapter on accepting gifts from non-Muslims. He narrated several *ḥadiths* indicating its permissibility, including the Jewish woman gifting a sheep to the Prophet, PBUH.

As for the *ḥadith* in which the Prophet, PBUH, said “*I have been prohibited to accept the present of polytheists*”, we have two justifications:

The first is that the prohibition may be abrogated. Al-Khaṭṭābī stated: “That might be abrogated because he, PBUH, accepted a gift from more than one of the non-Muslims. Al-Muqawqis gifted him the Coptic Maria, and a mule. Also, Uqaydir Ibn ‘Abdul-Malik, King of Duma, gifted him and he accepted the gift.

Someone may claim that there is a difference between the polytheists’ gifts and those of the People of the Book”. Such a claim is refuted by saying that abrogation is not proven merely by possibility.

The second justification is that the prohibition applies to those who are intended to be friends and allies with non-Muslims by accepting their gifts.

This view is strong and solid, and accordingly, accepting the churches’ financial aid in order to use it to bury a dead Muslim body is conditional on not being loyal and ally to them, much less defaulting some of the *Shari’ah* rulings. Moreover, this prohibition is not applicable to the deceased and does not apply to him.

- 4- Borrowing from Western banks, with usury (interest). This could be categorized under the juristic legal maxim that states “*Necessities overrule prohibitions*”. However, scholars of *’Uṣūl* stipulated that the value must be estimated first, and accordingly, borrowing must be equal to the burial expenses and not exceed. Knowing that if borrowing is possible from another source, such as neighbors and friends, without usury, then it is obligatory to resort to them and avoid borrowing from traditional usurious banks.
- 5- Communicating with Islamic charities in Europe. The duty of Islamic charities in European countries towards communities is great. They receive significant support from a number of countries, most notably KSA, in recognition of their value and impact in charitable works and spreading Islam. The budgets these charities have and the *zakāh* they collect, parts of it can be used in the field of burial for those who are unable to pay its costs. These charities may also undertake buying cemeteries specifically for Muslims. Moreover, they can carry out the procedures for transporting the dead Muslim bodies to their homelands after doing ritual washing, shrouding

them, and performing funeral prayers on them. Charities have access to what is not possible for individuals. Rather, they can open the way for easy loans free from usury, and give a wide period of time to the relatives of the dead so that they can pay at their convenience. This is in accordance with Allah's saying, "*Prescribed for you when death approaches [any] one of you if he leaves wealth [is that he should make] a bequest for the parents and near relatives according to what is acceptable - a duty upon the righteous*" [Al-Baqarah: 180].

- 6- Putting money into a common pool. A number of individuals united by a neighborhood, institution, friendship, etc., can participate in establishing a money pool through collecting an equal amount of money in a fund or bank account every month, and each month one of them receives the collected money. And so on, until a full year passes and everyone has received his share, and the money he paid in installments has been returned to him. Contemporary jurists call this transaction money pool, and its original ruling is the permissibility as long as it does not involve deception, harm, or usury. Usually, the transaction is free of these risks, as everyone pays the same amount monthly in installments, and one of them initially receives all the combined amounts, followed by another, until the year ends. The advantage of this transaction is that it provides an appropriate amount each month, which may be difficult for an individual to obtain, knowing that taking turns is either by agreement, or by lottery in cases of dispute and disagreement. The Council of Senior Scholars has issued a majority decision of the permissibility for this transaction.
- 7- Appointing a lawyer to represent the deceased for obtaining an exception to the payment in order to avoid cremation. This is appropriate, especially if a lawyer willing to plead, or appointed by the court free of charge given the hard circumstances of the deceased.
- 8- Commercial post-mortem insurance for transporting the dead body to a Muslim country. A requirement of this insurance is that an expatriate Muslim pays a periodic amount to a private insurance company every year. In return, this company undertakes all procedures for transporting his dead body to his Muslim homeland. The insured person usually attaches all his information, the address of his family, and the location of the cemetery in which he wishes to be buried after his death.

The problem with such insurance is the existence of *Gharar*<sup>3</sup>, as the insured person may have a long life and continue to periodically pay the insurer a lot of money that could have been invested in a successful investment. Therefore, according to contemporary jurists such insurance is prohibited due to the strong suspicion of *Gharar*, and because it doesn't fall under the scope of permissible cooperative insurance. Yet, some other contemporary jurists permitted such insurance out of necessity.

The above solutions will prevent the cremation catastrophe. Burning people's bodies is attributed only to the Great Creator, not to weak creatures. In a *ḥadīth* narrated on the authority of Ḥamzah Al-Aslamī, the Prophet, PBUH, said, "*None is allowed to chastise with fire except the lord of the fire*". Burial is an honor to the dead, the matter that stipulates washing, shrouding, and perfuming the whole body, and furthermore performing funeral prayer on him, not to commit such heinous and witnessed crime against him.

Islamic countries have a major role in preventing this disaster in which many Muslims in the West involve themselves. In fact, KSA is a leading country in serving its citizens and no Saudi citizen has been cremated. Giving great concern to members of its community abroad, is the factor that distinguishes KSA from any other country. Any Saudi citizen dies abroad, precise procedures and excellent follow-up from KSA embassies in countries around the world take place, based on what is dictated by the basic system of the Saudi regime.

It may be appropriate in the coming periods to expand the use of technology to support this field (Ahmed, Alharbi, & Elfeky, 2022; Elbyaly & Elfeky, 2023a, 2023c, 2023e, 2023f, 2023g, 2023h, 2023i; A. Elfeky, 2017; A. I. M. Elfeky & Elbyaly, 2016, 2019, 2023a, 2023b, 2023c, 2023e, 2023f, 2023g; A. I. M. Elfeky, Najmi, & Elbyaly, 2023, 2024a, 2024b; Elfekyand, 2016; Masada, 2017; Masadeh & Elfeky, 2016).

The presence of Muslims in the West, especially students, is a temporary stage in which they can raise the level of their scientific specializations, in order to return to their homelands and serve the educational process there. They are considered positive cadres that give a strong impetus to development in their countries. The Saudi students set the most wonderful examples in benefiting from scientific expertise in the universities of the Western world, and they contribute effectively to the applied educational process. Whoever among them died, his body is returned with the utmost honor, his rights are preserved, a legitimate funeral (according to *Sharī'ah*) is held for him, and his family is consoled by the competent authorities in the Kingdom.

<sup>3</sup> *Gharar* is an Arabic word that is associated with uncertainty, deception, and risk. It has been described as "the sale of what is not yet present," such as crops not yet harvested or fish not yet netted. Examples of *Gharar* in modern finance include futures and options contracts, which have dates of delivery in the future. pg. 128



## 12. CONCLUSION

This research developed several findings, the most important of which are the following:

- 1- The original ruling for a Muslim to live in the West is the prohibition. This is due to the dangers of living with non-Muslims to a Muslim's soul, faith, family, and children.
- 2- Muslim expatriates must seriously think about their situation if they die in the West and do not have a Muslim cemetery, and consequently the risk of having to cremate their bodies.
- 3- The original rule is that if a Muslim dies, his body must be buried in Muslim cemetery, not in a cemetery belongs to people of other faiths, such as Christians, Jews, and Buddhists.
- 4- It is the duty of Muslims who are living in the West to join hands to establish their own cemeteries, or to transport Muslims' bodies to their Muslim homelands, or to the closest neighboring Islamic country.
- 5- Burial, in the juristic terminology, means hiding under ground, which is completely consistent with the linguistic definition of the word.
- 6- What Westerners do by exaggerating in hiding coffins and carrying them in dark private cars is contrary to the guidance of the Sunnah of our Prophet in this regard.
- 7- What is meant by the Western world, whether American or European, are nations that belong to distorted or false faiths such as Christianity, Judaism, atheism, or Buddhism. Muslim jurists call such lands the abode of disbelief, which is the abode in which disbelief prevails.
- 8- Considering the prime faith depends on being manifested; if disbelievers prevail in a land to the extent that Muslims cannot publicly express their faith only if they have been authorized to do so by the disbelievers, then this is an abode of disbelief.
- 9- The original ruling of burying a dead in the ground is that the process must be free and people must not be burdened with paying money to governments in order to obtain a burial plot to be buried.
- 10- Western countries normally mandate people to buy their cemetery, and no one can be buried except for payment. Whoever is unable to pay has a very strange fate, as his body is cremated in special high-temperature ovens. When corpse turns into ashes, the crematorium delivers the ashes to the family of the dead person to bury him in their homes' gardens. Otherwise, ashes are thrown into a sea, river, or faraway places outside cities. Every Western country has its own laws in this regard, all of which are united by mandating payment for burial.
- 11- This Western system includes everyone, even Muslims who live in these Western countries, which consider these financial returns to be a type of taxes that people pay in exchange for benefits they receive during their lives.
- 12- The Western system is based on two abominations regarding burying dead: the first is consuming people's property wrongfully. While the second is cremating bodies of those who are unable to pay burial expenses and funeral procedures.
- 13- Islamic legislation absolutely rejects these two abominations, and its texts guide mercy, help, and compassion, and consider that honoring a dead is burying him. Rather, it warns that attacking the body of a dead is the same as attacking the body of a living.
- 14- There are legal rulings and conditions for burying the body of a Muslim in the West that have been discussed in detail.
- 15- The original ruling of burying a Muslim's body is that it should be buried in Islamic lands where Muslims are dominant, and in whose countries Muslim law is applied, and where Muslims have well-known Islamic cemeteries.
- 16- **Muslims living in the Western world have two situations:**

The first situation is: when they have their own cemeteries in which only Muslims are buried. Some Western countries, as an investment, allow the sale of burial plots to Muslims so that they can bury their dead according to Islamic law. If a Muslim dies in such circumstances, his relatives have a choice between two options:

- a) To bury his corpse in Muslims' cemetery. It does not matter that it is located in the West, as the point is that it is only for Muslims and the dead of other faiths do not share it with them.
- b) To send his corpse to his Muslim homeland or to the closest neighboring Muslim land.

The researchers give priority to the second option due to evidences had been mentioned in the research.

**The second situation is:** when Muslims do not have their own cemeteries, and the Western country in which they live allows them to be buried in its cemeteries in exchange for financial costs determined by their competent authorities.

**Here are the details to be explained as follows:**

- a) If this dead Muslim bequeaths property, a portion must be deducted to cover the costs of shipping his body to his homeland or a nearby Muslim country. His heirs are prohibited to divide the inheritance except after deducting these costs and debts.

The researchers chose what is established by consensus that paying for the shroud and the burial supplies take precedence over repaying the deceased debts.

- b) If this dead Muslim was poor and did not bequeath money. In this case, Muslims must provide costs of the coffin and shipping of their brother's body to his Muslim homeland. It is permissible to use their *Zakāh* in this regard.
- c) If the deceased, his heirs, and the surrounding Muslims have no money. A Muslim may be living alone in one of the villages of remote Western cities, and has no contacts with Muslims living in the same lands. If such a person dies, the high cost of preserving his body in mortuaries may force the competent Western authorities to cremate the body and turning it into ashes.

**17- In this anomalous situation, researchers proposed eight solutions, which can be summarized as follows:**

- i Burying a deceased Muslim in the garden of his house.
- ii Burying the deceased Muslim secretly in a remote place in wilderness or a desert where no people or on deserted mountains, provided that no harm affects his Muslim relatives, friends, or acquaintances who make it. When questioned about him, they could resort to *Tawriyah* (i.e., concealment of truth without telling a lie through using multi-connotative statements).
- iii Resorting to financial aid, even if it comes from churches.
- iv Borrowing from Western banks, even if with usury.
- v Communicating with Islamic charities in Europe.
- vi Establishing a money pool.
- vii Appointing a lawyer to represent the deceased for obtaining an exception to the payment to avoid cremation.

Commercial post-mortem insurance for transmitting the body to a Muslim country.

18- Islamic countries have a major role in preventing this disaster in which many Muslims in the West involve themselves. In fact, KSA is a leading country in serving its citizens and no Saudi citizen has been cremated. Giving great concern to members of its community abroad, is the factor that distinguishes KSA from any other country.

### **13. PROPOSALS**

**The research developed a set of important proposals that can be discussed in separate research, as follows:**

- 1- Ashes and its commercialization in the West, a critical Islamic view.
- 2- Employees' money pools, contemporary applications among Islamic communities in the West.
- 3- Muslims living in the West and the problem of adaptation and return to the Islamic homeland: views and proposals.
- 4- The legal maxim "*Should a prohibition not be fulfilled except through abandoning a matter, that matter must be abandoned*" and its contemporary applications in the lands of the West.
- 5- Burying the dead in distorted faiths' rituals: study and evaluation.
- 6- Establishing Islamic cemeteries in the West. Rulings, regulations and ethics.
- 7- This research confirmed the integrity and health of the organs during life and after death.

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