Rules Concerning Graveyards

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Q2082. What is the ruling in the matter of appropriating a public cemetery with a view of building private property on it? What is the view on procuring a title deed to this effect? Is such a cemetery considered a type of public endowment? Should holding actual control of the land by private individuals amount to usurpation? Should the holders of actual control of the land pay rent? If this is so, where should the proceeds be spent? And finally, what should be the fate of the buildings erected on the land?

A: Procuring the title deed of the public cemetery per se is not a sharʿī proof of ownership. It does not act as an excuse to usurp it either. The fact that it is a public cemetery is not a sharʿī proof that it is a kind of endowment for the purpose of burying the dead in it either. However, if, according to common view, the place is a kind of public facility used as a burial ground, or any similar use, or there is sharʿī evidence that it is a kind of endowment for burying the Muslim dead, the control exercised by these people over the land for their own personal use should be treated as usurpation, which is ḥarām to embark on. Thus, they should relinquish control of the burial ground, demolish the installations, and restore the land to its original state. Yet, holding them liable for payment of rent for using the land is not proven [not a clear-cut matter].

Q2083. A 35-year-old cemetery was demolished by the Council and turned into a public park. During the era of the previous regime, a number of buildings were erected on the land of the cemetery. Is it permissible for the competent authority to rebuild such facilities?

A: It is not permissible to have any one of these in the land: Build any installations, hold actual control of it, or make any change or alteration. That is, if [a] the land is endowed for the purpose of burying the Muslim dead, [b] the building work would entail exhuming the dead bodies or desecrating the graves of the pious, the scholars, or the believers, or [c] the land is a public facility needed to be used by the public. Otherwise, it is permissible in itself.

Q2084. A piece of land was endowed for burying the dead. The cemetery contains the graves of one of the descendants of the Imams (a.s.) and some martyrs. Since there is no suitable land to use by the youth for outdoor sporting activities, is it permissible to use the graveyard for this purpose provided that Islamic code of practice is upheld?

A: It is not permissible to change the cemetery into a playground. Nor is it permissible to have right of disposal over the land held in trust in avenues other than those specified in the endowment deed. Furthermore, it is not permissible to desecrate the graves of Muslims and the beloved martyrs.

Q2085. Is it permissible for the visitors of one of the holy shrines to park their cars inside a century-old cemetery that is no longer used as a burial ground? Taking into consideration that the people living in the village or elsewhere were burying their deceased relatives in this cemetery but now they have chosen another place for this purpose.

A: There is no harm in it provided that the act is not tantamount to desecrating the graves

of Muslims, as seen in the common view. It should also not constitute a nuisance to the visitors of the holy shrine.

Q2086. Funeral directors prevent the digging of new graves beside some existing ones. Is there a sharʿī reason for that? Are they justified in what they are doing?

A: No one has the right to reserve land around the graves of their relatives and, thus, prevent the believers from burying their dead in the public cemetery provided that the latter is held in trust or made available for the public to bury their dead.

Q2087. By virtue of a court order, a person came to own a piece of confiscated land. It is situated beside the cemetery that is no longer capable of accommodating more graves. Is it permissible to use the land for burial of the dead, after securing permission of the current landlord?

A: If the actual owner can be deemed the rightful owner of the land, there is no objection to making use of it with his consent and permission.

Q2088. A person donated a piece of land to be used as a burial ground and made it a public cemetery for Muslims. Is it permissible for the board of trustees to charge people a fee for burying their dead there?

A: They have no right to demand payment of anything for burying the dead in a public graveyard that has been designated as an endowment. However, there is no objection to their charging a fee for providing any sort of service to the cemetery or the relatives of the dead in connection with burying their loved ones.

Q2089. Due to the non-availability of a piece of land in the town centre to build an information centre on it, is it permissible to build the centre in the derelict part of an old cemetery?

A: It is not permissible if the public cemetery was designated as an endowment for burying the Muslim dead, or the building of the centre would entail exhuming the dead bodies or desecrating the graves of Muslims. Otherwise, there is no objection to that.

Q2090. As a mark of respect for the martyrs, who were residents of our village and are buried elsewhere, it is planned to install memorial stones carrying their names in the village cemetery. Is this permissible?

A: There is no objection to building symbolic graves. However, it is not permissible to prevent other people to bury their dead in that place. This should be so if the land is held in trust for the purpose of burying the dead.

Q2091. We have planned to build a medical centre on a piece of derelict land situated on the periphery of the cemetery. However, we could not absolutely conclude that the land was not used, sometime in the past, as a burial ground. This is borne out by the fact that the residents disagree among themselves one way or the other. What they seem to agree on is that there are dead bodies buried around the piece of land intended for building the medical centre. What should we do?

A: There is no objection to it unless it is [a] proved that the land is held in trust for the purpose of burying the Muslim dead as an endowment, [b] the land is a designated public place for the residents to hold ceremonies on it, or [c] building the medical centre would lead to exhuming the bodies of the believers or subject their graves to an act of desecration. Otherwise, it is not permissible.

Q2092. The area where we live is in need of a masjid or a health centre. There are no lands available to build any of these two projects, apart from an unused piece of land that belongs to the cemetery. It is intended that the proceeds from leasing the piece of

land to these public services be spent for the needs of the cemetery itself. Is it permissible to lease this land, especially since nothing is known about the specific nature of holding it in trust?

A: If the land was held in trust for exclusive use as a burial ground, it is not permissible to lease or use it to build a masjid, a medical centre, or any other facility. However, it is permissible to put the land to use in any way that could render a service to members of the public in the area provided [a] it is not known by way of evidence that it has been held in trust for burying the dead, [b] it has not been designated as a public place for use as a burial ground for the residents, [c] it did not contain any grave, and [d] its owner is not known.

Q2093. The Water and Electricity Board intends to harness the power of water in generating electricity by building a number of dams. Among these projects is building a dam across the Karoon River. The area, which will be flooded by the dam lake, contains an old cemetery. Going ahead with the project is dependant on tearing down the graves in this cemetery. What is your view on the matter?

A: There is no objection to tearing down the old graves, containing bodies already turned into dust. It is not permissible to pull down the graves, containing bodies that have not yet turned into dust. Nor is it permissible to exhume the bodies that have not yet turned into dust. However, there is no objection to building the project at the same place if, considering economic or social situations, it is necessary to do so and moving the project from that area to another one, or sparing the cemetery by rerouting the course of water, is proved very difficult or unbearable.
That said, this should be carried out by moving the graves, containing bodies that have not yet turned into dust to some other place provided that the exhumation as such is not realized, in that it could be done by moving the bodies along with the surrounding soil. Should any dead body get exposed in the process, it should be moved and buried somewhere else.

Q2094. There is a plot of land that is adjacent to an existing cemetery. There seems to be no sign of any graves in the said land. However, at some stage in the past, it might have been a cemetery. Is it permissible to have disposal over this land by building a facility for social services?

A: If the land is part of the public cemetery that is held in trust for the purpose of burying the dead, or is considered, in the common view, the precinct of the cemetery, it should be treated in the same way the cemetery is. It is, therefore, not permissible to hold actual control of it.

Q2095. Is it permissible for anyone to buy a piece of land to be used for burial and building a grave over it before one actually dies?

A: If the place where the grave will be built is lawfully owned by others, there is no harm in buying it. Should the piece of land be held in trust for the purpose of burying the believers' dead, it is not right to buy or reserve it for oneself, for it entails preventing others from making use of the land to bury their loved ones.

Q2096. Is it permissible to open up a walkway for pedestrians through the cemetery where it could lead to removing a number of twenty-year-old graves?

A: There is no objection to building a pathway through the graves provided that the ceremony is not an endowment, and this would lead neither to exhuming the dead bodies of Muslims, nor desecrating the graves.

Q2097. Is it permissible to build a masjid on the land of a derelict cemetery, especially when it is not known whether or not it is held in trust?

A: There is no objection to doing so provided that the land of the cemetery is not: [a] an endowment, [b] private property, [c] a facility for the public at large, or [d] a piece of land for holding ceremonies and building the masjid does not entail desecrating the graves or exhuming the bodies of Muslims.

Q2098. A piece of land has been a burial ground since a century ago. A few years ago, excavations in the land revealed the ashes and bones of the dead. Is it permissible for the Council to sell this land?

A: It is not permissible to either sell or buy the land if the cemetery was endowed. However, if the excavations lead to exhuming the bodies of the dead, this is also ḥarām.

Q2099. The Ministry of Education partitioned a somewhat old cemetery for the purpose of building a school on the partitioned land. The Ministry has done this without obtaining the approval of the residents. However, the school is now up and running. The students perform their prayer at the premises. What is your view on the matter?

A: There is no harm in making use of the school, nor is there harm in holding prayer at the premises provided that there is no evidence pointing to the fact that the land on which the school was built was endowed for the purpose of burying the dead, that it is not a public service facility for burying the dead or for some other use, and that it is not private property.