

Towards a New Jurisprudential Reading of the Ruling on Dog Impurity: A Contemporary Analytical and Foundational Study

Introduction

The dog stands as one of the oldest and most loyal animals in the history of human-animal relationships. The moments of this relationship have woven an exceptional bond between them across thousands of years. The dog has been humanity's finest companion in travels and adventures, and a faithful aide in hunting and guarding. Thus, a deep friendship was established, growing and flourishing on the foundation of cooperation and mutual affection.

In ancient times, dogs' roles were limited to essential tasks such as hunting and guarding homes and herds. With the evolution of human societies, reality has imposed an increasing importance of dogs in our lives. The natural development of the human-dog relationship and their growing proximity has automatically expanded dogs' roles. These now include assisting people with special needs, extending to participation in search and rescue operations in the modern era.

Over time, this relationship evolved from merely considering the dog as an assistant to regarding it as a family member in many societies, particularly in European countries. Dogs have come to enjoy a prestigious status, becoming an integral part of daily life's fabric, pampered and cared for as children are.

Moreover, people's perception of dogs has undergone a radical transformation. Gone are the days of unvaccinated dogs that were more prevalent in the past and could transmit diseases and inspire fear. In our present era, dogs receive exceptional care from veterinarians and healthcare providers. Many dogs enjoy special baths, balanced dietary regimens, and sleep in comfortable, plush spaces. Furthermore, today's dogs are cleaner than ever before, receiving regular dental care and systematic veterinary attention that includes vaccinations and periodic examinations.

These developments reinforce the notion that a dog is not merely a pet but a being worthy of attention and care, which also supports arguments indicating its ritual purity (taharah). The deep relationship between humans and dogs demonstrates how this animal can be a positive and healthy part of human life, necessitating a reconsideration of traditional concepts associated with canine impurity (najasat al-kalb).

I'll translate this comprehensive section about ritual purity and impurity while maintaining its academic nature and preserving the Arabic terminology:

****Chapter One: The Concept of Ritual Purity (Taharah) and Impurity (Najasah) in Language and Islamic Jurisprudence****

First: The Linguistic Concept of Ritual Purity and Impurity

١. Purity (Tuhr and Taharah)

According to Tahdhib al-Lughah: "Al-Tatahhur means abstaining from sin and blameworthy actions. This is referenced in Allah's mention of Lot's people and their statement about the believers among Lot's people: 'Indeed, they are people who keep themselves pure,' meaning they abstain from committing indecency. It is said: 'Someone is tahir al-thiyab (pure of garments)' when they are not morally corrupt. Allah's statement

'purified wives' refers to being pure from menstruation, urine, and excrement. Al-Tatahhur means abstaining from what is forbidden."[i] Al-Tatahhur means abstinence and refraining from sin. When someone is described as tahir al-thawb, it means they are not associated with impurity.[ii]

In Maqayis al-Lughah: "The root (ta-ha-ra) indicates cleanliness and removal of filth. From this comes al-tuhr, which is the opposite of impurity. Al-Tatahhur means keeping oneself away from blame and all that is ugly. Someone is tahir al-thiyab when they are not defiled."[iii] In Al-Misbah al-Munir, najis means being filthy and unclean, and filth can be impurity, so it corresponds to this meaning.[iv]

Therefore, tuhr and taharah linguistically mean cleanliness and abstaining from all that is ugly. Tuhr means the removal of dirt, and dirt is the opposite of cleanliness and purity. When we describe something as tahir, it means it is pure, free from filth, and devoid of any ugly or blameworthy qualities. Taharah is both a moral description and a description of what is physically clean.

The linguistic meaning of taharah can be summarized as freedom and purity from filth, whether physical or moral. Physical filth includes excrement, while moral filth includes sins like adultery and theft. This linguistic meaning is the same as that used in the Quran.

۲. Impurity (Najs and Rijs)

The term najis refers to something filthy, even among people, and everything you consider filthy is najis[v]. It is said: "Someone is najis al-sarawil" when they are unchaste[vi]. In a hadith narrated from Al-Hassan regarding a man who committed adultery with a woman and then married her, he said: "He defiled her and he has more right to her." Al-Najis means filth[vii].

In Maqayis al-Lughah: "The root (nun-jim-sin) is an authentic root that indicates the opposite of purity. Something that is najis is filthy. Al-Najs means filth."[viii] In Al-Misbah al-Munir: "Something becomes najis when it is filthy and unclean."[ix]

Thus, najis linguistically means filth and dirt, and it can be a moral description for someone who commits indecent and immoral acts.

As for rijs: from the trilateral root (ra-jim-sin): The letters ra, jim, and sin form a root that indicates mixture. It is said "they are in a marjusah of their affair," meaning confusion. From this category comes rijs meaning filth, because it stains and mixes[x]. In Jamharat al-Lughah: "Al-Rijs means punishment."[xi]

In Kitab al-'Ayn by Al-Farahidi: "Everything considered filthy is rijs, like swine. A person becomes rijis from filth, and they are rijs marjus. In the Quran, rijs means punishment, like rijz, and all filth is rijs. The rijs of Satan refers to his whispers and incitement. Rijs also means the severe sound of thunder."[xii] In Tahdhib al-Lughah: "Al-Zajjaj said: Rijs in the language is a name for everything considered filthy in action. It is said: rajisa al-rajul rajsan, and rajisa yarjisu when someone performs an ugly action. Al-Rijs with a fatha on the ra means intensity of sound, as if rijs is the action whose mention is ugly and increases in ugliness."[xiii]

In Lisan al-Arab: Rijs means filth, and it is said: the filthy thing, and it can express the forbidden, ugly action, punishment, curse, and disbelief.[xiv]

I'll continue with the translation:

In Al-Misbah al-Munir: "Al-Rijs means stench and filth. Al-Farabi said: 'Everything considered filthy is rijs.' Al-Naqqash said: 'Rijs is najis.' In Al-Bari': 'They sometimes say rajasah and najasah, meaning they consider them synonymous.' Al-Azhari said: 'Najis is the filth that exits the human body.' Based on this, rijs, filth, and najasah can be synonymous, and sometimes filth and rijs can have a meaning different from najasah." [xv]

The difference between najis and rijs, according to Al-Raghib is: "Najis is used for what is naturally considered filthy, while rijs is most commonly used for what is considered filthy by action, and this is why it has been interpreted as sin and wrath." [xvi]

To summarize the linguistic meaning, rijs refers to filthiness in action. Filth is dirt [xvii], and sometimes rijs can mean the same as najis.

In Quranic usage, the word najis appears once with the meaning of filth, while rijs appears in nine instances, seven of them meaning filth and two meaning punishment and penalty.

As for khabath, Ibn Faris mentioned: "The letters kha, ba, and tha form one root indicating the opposite of good; it is said khabith, meaning not good." [xviii] Al-Farahidi mentioned: "Al-Khabith is an attribute for everything corrupt, bad in taste, and bad in color." [xix] Al-Khubth means evil, inferior, and corrupt. [xx]

In Al-Misbah al-Munir: "Khabith is applied to the forbidden like adultery, and to what is inferior and detested in taste or smell like garlic and onion. From this comes al-khaba'ith, which are things that Arabs considered repulsive such as snakes and scorpions. Allah said: 'And do not aim toward the defective therefrom, spending [from that],' meaning do not give the inferior in charity instead of the good. Al-Akhabthan means urine and feces, and something khabith means najis." [xxi]

Therefore, khabath is not limited to impure substances but includes even what has a bad taste. It appears in the Quran once, while khabith appears in seven instances with meanings close to its linguistic meaning.

I'll translate this section on the juristic terminology:

Second: The Concept of Purity (Taharah) and Impurity (Najasah) in Juristic Terminology

١. The Concept of Purity in Juristic Terminology

There are various juristic definitions of taharah, but all agree that it is a quality which, when established, validates worship.

In Hanafi jurisprudence, taharah is defined as: "cleanliness from ritual impurity (hadath) or physical impurity (khabath)" (١). Hadath is spiritual impurity resulting from major ritual impurity (janabah), defecation, and associated passing of wind. Khabath is physical impurity such as excrement, carrion, and similar substances. The Malikis defined it as: "a legal quality that permits its possessor to perform prayer," including freedom from both physical impurity and ritual impurity (٢). The Shafi'is defined it as: "the removal of the prohibition resulting from ritual impurity and physical impurity" (٣). It is thus an action that permits prayer, such as ablution (wudu'), ritual bath (ghusl), and removing impurity from clothes, body, and place (٤). The Hanbalis defined it as: "the removal of ritual impurity, whether major or minor, and the removal of physical impurity" (٥).

In Shi'i jurisprudence, taharah is defined as: "the use of a purifying substance conditioned by intention, where the purifying substances are water and earth, with water being a purifier from both ritual and physical impurity"(^٦). This definition is limited to the three known forms of purification.

Sheikh Al-Ansari stated that taharah has multiple usages among jurists: It may be considered as a verbal noun, meaning one of the purifications; it may refer to a real or conventional quality in the legally responsible person (mukallaf), which is the state resulting from one of these three purifications, opposed in this sense by ritual impurity (hadath); and it may refer to a real or conventional quality in bodies, opposed in this sense by impurity (najasah), thus meaning cleanliness and freedom from impurity(^٧).

Therefore, jurists may intend by taharah either specifically the act of ablution, ritual bath, or dry ablution; or the special state achieved by the soul after performing these three acts, opposed by hadath which is spiritual pollution due to its causes like major ritual impurity; or it is a real description of a physically clean body in reality or a legal consideration determined by the Lawgiver for the body. This last meaning of taharah is opposed by najasah. Thus, taharah ultimately means freedom from impurity.

(١) Hashiyat Radd al-Muhtar, Ibn Abidin, vol. ١, p. ٨٣.

(٢) Al-Mukhtasar al-Fiqhi li-Ibn Arafah, Ibn Arafah, vol. ١, p. ٦٤.

(٣) Tuhfat al-Muhtaj fi Sharh al-Minhaj, Ibn Hajar al-Haytami, vol. ١, p. ٦٣.

(٤) Al-Fiqh al-Manhaji ala Madhhab al-Imam al-Shafi'i, vol. ١, p. ٢٧.

(٥) Kashshaf al-Qina', Al-Buhuti, vol. ١, p. ٣٢.

(٦) Al-Lum'ah al-Dimashqiyyah, Al-Shahid al-Awwal, p. ١٥.

(٧) Kitab al-Taharah, Al-Ansari, vol. ٥, p. ١٩.

I'll translate this important section about the juristic concept of najasah:

٢. The Concept of Impurity (Najasah) in Juristic Terminology

The meaning of najasah becomes clear from understanding taharah, as they are opposing descriptions in terms of contradiction rather than contrariety, since they cannot both be absent from one thing by being replaced with another description. A thing is either tahir (pure) or najis (impure), whether we interpret taharah as the result of purification or not.

Therefore, najasah is the absence of taharah, and thus it is defined in jurisprudence as: a legal quality that necessitates for its subject the prohibition of prayer performance, whether concerning the body or place.

This means najasah is a considered quality, sometimes residing in clothing thus prohibiting prayer in it, sometimes in a place including the body thus prohibiting prayer there, and sometimes in the person themselves, called hadath, thus prohibiting them from prayer.

In Shi'i definition, najasah is: "a special filth in the view of the Lawgiver, unknown in its essence, necessitating obligation to avoid it in specific matters. Thus, any body free from such filth in the Lawgiver's view is pure and clean."

Accordingly, it is incorrect to define it as the Lawgiver's ruling requiring avoidance due to repugnance and aversion, because this definition suggests that najasah is the ruling of obligatory avoidance itself. This is certainly not the case, as najasah is a quality that characterizes physical bodies and has no direct relationship to rulings, unless the

intention is that najasah is an abstract quality derived from the Lawgiver's ruling requiring avoidance due to repugnance or aversion.

This is the source of disagreement about whether najasah and taharah are qualities like conditionality and causality in declaratory rulings (al-ahkam al-wad'iyyah), or whether they are real, inherent qualities in things.

Scholars like Sheikh Al-Ansari believe that what is understood from the Quran and Sunnah is that najasah is an inherent quality from which commissive rulings (al-ahkam al-taklifiyyah) branch, such as the permissibility of prayer in a state of purity and the obligation to avoid impurity. Thus, najasah is, for example, external filth, not a quality abstracted from commissive rulings like declaratory rulings such as conditionality, causality, and prevention.

Therefore, based on Sheikh Al-Ansari's statement, there is no other ruling beyond the obligation of avoidance resulting from the existence of external filth. There are two things: first, the inherent filth in the body, and second, the legal commissive ruling resulting from that external, natural impurity.

Some scholars see there is a third element, which is the declaratory ruling of najasah, because the disagreement is based on whether declaratory rulings are inherently established through divine institution, or whether they are abstracted from commissive rulings. Based on the second view, the latter shouldn't require contemplation, as it's impossible to establish a declaratory ruling substantively, so there's no need to investigate its proof. Based on the first view, the discussion centers on proving the establishment of najasah and taharah as additional to establishing the obligation of avoidance in the former and its absence in the latter. It's possible to establish everything except the four aspects abstracted from commission - namely causality, conditionality, prevention, and partialness in relation to what is commanded - and thus najasah can be legally established, as apparent from evidence indicating the derivation of obligatory avoidance from a thing's impurity.

It's worth noting here that in defining najasah, they mentioned it's unknown in essence and reality. Therefore, it became necessary to rely on the Lawgiver for understanding its reality, and mere external physical filth is not sufficient; because it might not be najis in the Lawgiver's view in the juristic sense, and without certainty about this, it's impossible to describe something as najis.

Also, we must understand that determining najasah in something doesn't merely suffice with it being najis for ruling that avoiding it is absolutely obligatory. Just as this might be a matter of worship (ta'abbud), it might be a matter of abstention without being obligatory. As the author of Al-Ghurar Al-Bahiyyah states: "Rijs or najs linguistically means filth, but this doesn't necessarily imply ritual impurity, nor does the command to avoid it [necessarily imply impurity]." This perhaps becomes clear in the case of wine - its being rijs, for example, doesn't necessarily mean it's najis, and even the obligation to avoid it doesn't necessarily imply its being najis, because najasah is a declaratory ruling, and the obligation of avoidance, considering the ruling and subject, applies specifically to consuming it, which is a commissive ruling, and there's no necessary correlation between them.

There must be some subtle point (nuktah) through which we understand from the Lawgiver's words that the najasah of things leads to the Lawgiver's ruling requiring abandonment and avoidance. This subtle point might be the customary correlation

typically, as several Quranic verses addressing the determination of najasah have commanded avoidance of it, which may form an intrinsic context for all impurities. Al-Kashmiri says: "Know that in hadith there is a topic rarely found in jurisprudence, which is that when the Lawgiver rules something as najis, He dislikes dealing with it or touching it, and commands avoiding and guarding against it. Allah says: 'Indeed, the polytheists are najis, so let them not approach the Sacred Mosque' [At-Tawbah: ٢٨], and says: 'Indeed, intoxicants, gambling, [sacrificing on] stone altars, and divining arrows are rijs from the work of Satan, so avoid it' [Al-Ma'idah: ٩٠], and says: 'So avoid the rijs of idols' [Al-Hajj: ٣٠]. Thus when He rules something as najis, He commands guarding against it and prohibits approaching it, so it is known that avoidance and protection are among the requirements of najis and rijs."

Or it might be a point of customary understanding (tabadur 'urfi) as Al-Hamdani says in his commentary on the narration about the obligation to wash the najasah of urine from non-edible animals: that what is customarily understood from "wash the garment from urine" is nothing but the intention to clean it from it, so it is understood from this that urine in the Lawgiver's view is among the filths that must be removed as an obligation, and this is the meaning of najasah.

The rest of the research has not been published.