



# MONKEYPOX: SIGNS OF A BOMB EXPLOSION IN FAMILY LAWS

SAFAA M. FAJA ALKOHZAIE

PHD. Family Law

University Al-Qadisiya/College of Law/ Iraq

safaa.faja@qu.edu.iq

**Abstract.** This article speculates that, similar to what happened with COVID-19, an explosion of family law-related legal issues may arise as a result of the current "monkeypox virus" outbreak.

It also draws attention to the assertion that there is a connection between, firstly, the monkeypox virus and its spread and, secondly, the rules governing relationships and actions covered by family laws, such as same-sex relations. These rules also apply to marriages, divorces, annulments, custody, and abandonment.

The history of the novel virus "monkeypox", its causes, and the manner in which it spreads are also covered in this article. These topics have a unique bearing on relationships regulated by family laws, especially in light of recent evidence tying the virus to homosexuals.

It also attempts to highlight the actual and perilous indicators of the virus' spread, which result in significant legal issues because of the virus and render some laws

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\* The research has been prepared in accordance with the American journal styles of Harvard and Yale, i.e., in line with the Bluebook citation style.



regarding marriage, divorce, separation, desertion, and other matters inapplicable to these issues.

By suggesting legal remedies before the judiciary and jurisprudence that commensurate with the goal and nature of family laws, this research offers a range of solutions for these legal issues that arise owing to monkeypox in family laws.

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### INTRODUCTION

No one had expected that the inhumane act of the African man who killed a monkey decades ago<sup>1</sup> would cause another viral disease to befall the human race on top of the existing viral diseases that are still ongoing today.

While the global population is still reeling from the horror of the coronavirus spread, a new nightmare emerged in the form of the “monkeypox”, which remains largely a mysterious disease especially in legal studies.<sup>2</sup> It has affected large segments of people as did COVID-19. At the beginning of the spread of the coronavirus, the world blamed China, deemed as “the epicenter of the virus”,

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<sup>1</sup> . Okwudili Okanume, *The monkey Pox Virus and The Inherent Danger in Rumor Mongering: Focus on Nigeria Print Media Reportage of The Crisis*, 4. Inter J.& Inter Relations, Media & Mass Comm Studies.UK.33,33 (2018) (Monkeypox was initially caused by an African man in Congo, Nigeria who killed a monkey and ate it with his family).

<sup>2</sup> Due to recent news about the spread of monkeypox and the great uproar ensuing, and due to the lack of legal sources concerning virus, this article relies on existing studies, books and researches, which are very few, and mostly medical and biological in nature, on top of several relevant articles and reports. This paper also relies on bulletins announced by international press and organizations. In the aspect of law, no studies or articles were found on the legal aspects of this subject.



leading to the spread of Asian phobia in many countries.<sup>1</sup> Now with the spread of the monkeypox, fingers are pointing at homosexuals, and likewise led to the spread of homophobia. Some believe that homosexuals are the reason for the spread of this disease<sup>2</sup>, while others believe that it only spreads among homosexuals.<sup>3</sup>

The act of one African man had been said to cause the re-emergence of monkeypox among humans.<sup>4</sup> This has exacerbated the existing issues caused by COVID-19 that is still ongoing to this day.

Monkeypox is a disease that originated from monkeys and some other animals in Africa decades ago.<sup>5</sup> This disease has caused a media uproar, causing psychological and social impacts. The great uproar is due to the fact that the virus can be transmitted from animals to humans, as well as among humans.<sup>6</sup> This has caused great panic and fear among people, even in countries where it was not expected to spread.<sup>7</sup>

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<sup>1</sup> See Boghuma K. Titanji & Keletso Makofane, *Monkeypox is Not a Gay Disease*, PLOS PLOGS: Open access (19 may, 2022) <https://speakingofmedicine.plos.org/2022/05/19/monkeypox-is-not-a-gay-disease/> [ <https://perma.cc/XS4N-XP7X>].

<sup>2</sup> Okanume, *supra* note 1, at 34.

<sup>3</sup> See Monica Gandhi, *We Should Vaccinate Gay and Bisexual Men for Monkeypox Now*, Medscape ( June 23, 2022) <https://www.medscape.com/viewarticle/976100> [ <https://perma.cc/7HZL-KHEC>] (Monkeypox has spread among gay men. From May 13 to June 22, 2022, more than 3,100 cases were recorded in Britain, Canada, Spain and European countries, in 58 non-endemic countries, and it is remarkable that the spread of the virus continues without relief among men who have sex with men .Men).

<sup>4</sup> See *Id.* at 174-175 (Monkeypox is from the family of smallpox, which spread globally in the early 1970s until it was declared as fully eradicated by the United Nations in 1977. However, monkeypox has now re-emerged after several decades).

<sup>5</sup> See Okanume, *supra* note 1, at 31; Andrea M.Mccollum & Inger k.Damon , *Human Monkeypox*, 58 Clinic Infection Diseases. J. 260 ,260 (2014) (Monkeypox is said to have emerged from animals in Africa, specifically monkeys and squirrels. Developments in its genome have caused its transmission to humans).

<sup>6</sup> See.e.g.,Mccollum & Damon, *supra* note 7, at 261.

<sup>7</sup> See *Id.*



The spread of the monkeypox has exhibited similar patterns as that of the coronavirus.<sup>1</sup> It has been regarded as an explosion of social, economic, political and legal problems previously initiated by the coronavirus.<sup>2</sup>

The explosion can be seen in the aspects of law in general and family law in particular, as the issue relates to family relations and is anticipated to cause legal problems in the context of the provisions of divorce, annulment, abandonment, separation, custody, gay marriages, and others. This is because such relationships are more affected by this disease, due to the nature of intimacy and close contact between two people.<sup>3</sup> The disease is intrinsically linked to this type of bilateral relations.<sup>4</sup> It can cause major legal problems as evidenced by the global uproar that accompanies the prevalence of homosexuals and same-sex couples.<sup>5</sup>

This article hypothesizes that the sudden spread of the monkeypox may lead to an explosion in family law, exacerbated by the sluggish handling of the event, as what happened with COVID-19 which saw numerous countries still struggling to develop a unified domestic and international legislation for managing the disease.

The legal bomb created by monkeypox can easily be imagined in family laws, specifically in the provisions of divorce, separation, abandonment, custody and

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<sup>1</sup> Ramazan Azim Okyay ET AL., *Another Epidemic in the Shadow of Covid 19 Pandemic: A Review of Monkeypox*, 6.Euras.J.Med&Ongology Rev.95,95(2022).

<sup>2</sup> It is largely acknowledged that the coronavirus has left lingering effects on all economic, social, political and legal fields, reflecting the inefficiency of many legal rules in managing the impacts. The titles of many recent books in the field are illustrative. COVID-19: THE PANDEMIC THAT NEVER SHOULD HAVE HAPPENED AND HOW TO STOP THE NEXT ONE ( DEBRA MAKIENZEI, 2020); SLAVOJ ZIZEK, PAN(DEM)IC! COVID-19 SHAKES THE WORLD( 2020); ROBIN WEBECETR ET AL, COMMUNICATING CLIMATE CHANGE DURING THE COVID-19 CRISIS (2022).

<sup>3</sup> Steven W. Thrasher, Blaming Gay Men for Monkeypox Will Harm Everyone, SIEINITIFC AMERICAN ( June 9, 2022) <https://www.scientificamerican.com/article/blaming-gay-men-for-monkeypox-will-harm-everyone/> [ <https://perma.cc/A2LR-SS3G> ].

<sup>4</sup> *Id.*

<sup>5</sup> See e.g. Nicola Davis, What is monkeypox and should you be worried?, The Guardian, (15. April, 2022 <https://www.theguardian.com/world/2022/may/23/what-is-monkeypox-source-cases-infections-spread-experts> [ <https://perma.cc/YEQ7-ZFD7> ].



others.<sup>1</sup> Such laws are heavily affected by environmental, social, physiological and biological developments,<sup>2</sup> as they regulate family relationships by taking into account the need for continuous healthcare, a quiet social life, and the physiological and biological changes for men and women. The exchange of roles by gender.<sup>3</sup>

This topic highlights the significance that monkeypox is no less dangerous than COVID-19.<sup>4</sup> Hence, legal studies in relation to it is just as important as that of COVID-19 due to the similar risks.<sup>5</sup> Focus should also be on the disease's spread pattern and its threat to large segments, especially married couples, partners, and homosexuals.<sup>6</sup>

This article follows the same legal approach as legal studies in terms of the adaptation and treatment of COVID-19 when it comes to family laws, and the

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<sup>1</sup> See *infra* section II.B.C. The court cannot allow the child to come into contact with either one of the parents that had contracted monkeypox or is suspected to have contracted it, as this goes against the purpose of custody which is to safeguard the best interest of the child.<sup>1</sup> Hence, the court has the right to prevent the affected mother or father from exercising her/his right to take custody of the child.

The argument here is that, by doing so, more harm would be inflicted upon the child; therefore, attention should not only be given on the deprivation of the affected parent from his/her rights, but also on the preservation of the child's interest.

This entails a conflict between the right of the affected parent and the interest of the child, as well as between the application of the principle of "the best interest of the child" and other relevant interests. Child custody and its procedures are regulated by family laws, such as the father's right to legal custody, the mother's right to physical custody, or the joint custody rights of the parents following their divorce.

<sup>2</sup> See FRANCES BURTON ET AL, TEACHING FAMILY LAW,13 (1999).

<sup>3</sup> *Id.* at 13-14.

<sup>4</sup> See Okyay ET Al, *supra* note 10, 95-96.

<sup>5</sup> Emmanuel Alakunle ET AL., *Monkeypox Virus in Nigeria: Infection Biology. Epidemiology. and Evolution*, MDPI.Viruses.J.REV.1, 4-5 (Sept , 2020) (The death rate from monkeypox in Africa reached 11% of those infected naturally, and may reach 20% for some cases involving chronic diseases such as heart and lung problems).

<sup>6</sup> See *Infra* section III.



development of solutions when spouses are infected with the coronavirus. The aforementioned are applied to the case of monkeypox, as it also directly affects the basic provisions in family law and the laws regarding homosexuality.

The correct logic obliges us, as a legal community, to develop legal solutions based on what we predict about the problems that may occur due to the spread of monkeypox among families. So we ask the questions of: Are the existing rules sufficient enough for addressing the problems we predict? Where can these problems occur in family laws? What are the proposed treatments if our predictions about the legal problems due to monkeypox come true?

Among the objectives of studying monkeypox in the field of family law include:

1) To propose legal solutions to the problems predicted before the disease spreads worldwide, 2) To pave the way for family courts in case of new facts resulting from the spread of monkeypox, and 3) To prevent the same mistake that the world did with COVID-19. This article also aims to test the adequacy of general family law provisions in addressing the spread of the virus between partners or spouses.

The first part of the article highlights the history of monkeypox, followed by its manner of transmission among humans, its relationship to the aspects of family and homosexuality, and the legal problems that are predicted to be caused by this virus, which warn of the emergence of danger in family laws. All these provide us with a clearer picture of the link between the virus and family relations.

The second part discusses the impact of monkeypox on basic family laws, beginning with the legal value of monkeypox, whether it is determined by medicine or the court. It also discusses the impact of the virus on the basic provisions in family laws such as divorce, separation, abandonment, custody, and others. This part offers solutions for courts and legislators with regards to the predicted legal problems that may emerge due to monkeypox.





Finally, the third part discusses the special relationship between monkeypox and the laws of homosexuality. It explores the reasons why monkeypox is linked to homosexuality, and the impact of this relationship on the effectiveness and philosophy of homosexuality laws.

## I. THE MEANING OF MONKEYPOX: IS IT A LEGAL BOMB WAITING TO EXPLODE WITHIN FAMILY LAWS?

### A. Definition of Monkeypox

In determining the relationship between monkeypox and family laws, it is necessary to review the history of the emergence of the disease, the method of its spread, and where it has spread.

#### 1. History of Monkeypox

Monkeypox is a viral animal disease with the symptoms of the common smallpox.<sup>1</sup> Despite popular belief that it is a new disease, it had actually spread in a number of African countries,<sup>2</sup> the first being Congo<sup>3</sup> due to a man who was inflicted with injuries after killing a monkey.<sup>4</sup> The first case was discovered in 1959.<sup>5</sup> Its initial symptoms range from fever, headache, swelling, back pain, muscle pain, general lethargy and fatigue.<sup>6</sup>

<sup>1</sup> World Health Organization (WHO), *Monkeypox*, Rep .Inform Consultation , 5 (3 Nov, 2017) [ hereinafter (WHO), *Mnkeypox*]; See Emmanuel Alakunle ET AL., *supra* note 19, at 1 (“[B]ased on their Animal hosts...”).

<sup>2</sup> Mccollum & Damon , *supra* note 7, at 260.

<sup>3</sup> Alakunle ET AL., *Supra* note 19, at 2.

<sup>4</sup> See Cited *supra* note 1.

<sup>5</sup> Alakunle ET AL., *Supra* note 19, at 2; *Contra* with Okanume, *supra* note 1, at 31. (“[ I]t started in central part of the Democratic Republic of Congo in the 1970’s. The first recorded case of the dreaded disease in Nigeria..”).

<sup>6</sup> See e.g. Davis, *supra* note 14.





These symptoms are followed by the appearance of a rash in the form of blisters all over the body.<sup>1</sup> Despite having no direct treatment, this disease usually disappears on its own after a period of 14 to 21 days.<sup>2</sup>

Surprisingly, since the beginning of its spread, attention has been widely directed at homosexuals.<sup>3</sup> Health experts believe that there is a relationship between monkeypox and homosexuality as the disease has been spreading widely among homosexuals.<sup>4</sup> Due to recent cases in the United Kingdom and Europe among gays and bisexuals,<sup>5</sup> Britain has begun to take measures to limit the spread of the disease by giving smallpox vaccines to this segment of the society.<sup>6</sup>

## 2. How and where monkeypox spreads

Monkeypox typically spreads from one person to another via intimate contact.<sup>7</sup> The virus can be contracted from surfaces, brushes, clothes, or respiratory

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<sup>1</sup> See e.g., *Id.*

<sup>2</sup> See *Id.*; See Also European Centre for Disease Prevention & Control(ecdc), *Monkeypox multi-country outbreak* , Rapid Risk Assessment .Art, 1 (23 May, 2022) (The disease may linger up to 21 days from the date of infection) [hereinafter (ecdc)].

<sup>3</sup> .see (ecdc), *supra* note 28, at 1.

<sup>4</sup> See *Id.*; Connor Boyd & Emily Craig, *Gay men could be offered monkeypox vaccine in targeted rollout as experts fear dozens of infected patients are slipping under radar - as Sajid Javid announces another ELEVEN cases*, daily mail ( 20 May, 2022),<https://www.dailymail.co.uk/health/article-10829741/Gay-men-targeted-monkeypox-vaccine-experts-fear-infected-slipping-radar.htm> [<https://perma.cc/7WEP-JXEK> ]; Emma Pinedo & Patricia Vicente rua, *Spain monkeypox cases tally reaches 30, mostly linked to sauna*, REUTARS ( May 21, 2022), <https://www.reuters.com/business/healthcare-pharmaceuticals/spain-reports-14-new-confirmed-monkeypox-cases-total-21-2022-05-20/> [<https://perma.cc/2VKE-63TP> ] (The first case of monkeypox occurred in a sauna in Spain, which then spread among homosexuals in several other countries, with no specific reasons identified).

<sup>5</sup> See Davis, *supra* note 14.

<sup>6</sup> See Boyd & Craig, *supra* note 30 (British Health Minister, Sajid Javid, stated that patients, especially homosexuals, should take the smallpox vaccine and be monitored closely).

<sup>7</sup> Alakunle ET AL, *Supra* note 19, at 3.



secretions, and especially via sexual contact.<sup>1</sup> The virus can also be transmitted via sweat, blood, and vomit.<sup>2</sup>

The rash caused by monkeypox tends to appear on one's face, palms, and feet, causing sores.<sup>3</sup> According to recent reports, the rash can also spread to the genitals, thighs, and skin around the anus, which became another reason why experts believe in a link between homosexuality and monkeypox.<sup>4</sup>

Although monkeypox is not classified as a highly dangerous and infectious disease, the death rates in Africa which reached 11%<sup>5</sup> portends a greater danger than COVID-19 if a shift in its strain occurs.<sup>6</sup>

### ***B. Monkeypox Legal Bomb***

A legal bomb is when a number of different and abrupt legal issues arise as a result of an emergency situation or a significant local or worldwide occurrence, necessitating the creation of numerous legal concerns without clear-cut solutions.

The rapid spread of monkeypox may lead to the emergence of numerous legal problems with no immediate solutions, similar to what happened with the coronavirus which resulted in perplexing legal situations that raised many legal questions.<sup>7</sup> We are currently facing an open war.<sup>8</sup> The COVID-19 pandemic had

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<sup>1</sup> See Gary M. Zaucha ET AL., *The Pathology of Experimental Aerosolized Monkeypox Virus Infection in Cynomolgus Monkeys (Macaca fascicularis)*, 81 Nature Protocols.1581,1581-1582 (2001).

<sup>2</sup> See e.g., Mccollum & Damon ,*Supra* note 7, at 260; Okanume, *supra* note 1, at 33 (“[M]onkey pox virus is highly contagious and transmitted through blood, vomit, and sweat of an infected victim.”)

<sup>3</sup> See Zaucha ET AL., *Supra* note 34. at 1582.

<sup>4</sup> See Boyd & Craig, *Supra* note 30.

<sup>5</sup> See Cited *Supra* note 19.

<sup>6</sup> *Id.* at 4-5.

<sup>7</sup> CATHARINA PISTOR, *LAW IN THE TIME OF COVID-19*, Introduction (2020).

<sup>8</sup> Okyay ET AL., *supra* note 10, at 95.



affected the aspects of family, work, businesses, and state economy, and had necessitated a re-understanding of certain criminal acts and other problems.<sup>1</sup>

Due to the bitter experience with COVID-19, it can be compared to a bomb that had exploded on us and causing turbulence to legal solutions worldwide.<sup>2</sup> The impending spread of monkeypox may lead to the emergence of a second legal bomb, similar to the one detonated by COVID-19.<sup>3</sup>

We may soon see the emergence of a number of new and unaddressed legal obstacles on the horizon due to monkeypox, similar to what transpired when the world was hit by COVID-19. Among the signs that predict the possibility of a legal bomb due to the spread of monkeypox are:

1. The absence of sufficient scientific studies on monkeypox at all levels.<sup>4</sup> In terms of the law, to the best of our knowledge, no study has yet examined the legal aspects linked to monkeypox, as well as its impact on family laws,

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<sup>1</sup> See PISTOR, *supra* note 40, at Introduction.

<sup>2</sup> It is well known that courts worldwide have been very busy dealing with the legal effects of COVID-19, such as the application of traditional general rules in Iraq, or the establishment of new laws in the US such as the “CORONAVIRUS PREPAREDNESS” law and the RESPONSE SUPPLEMENTAL APPROPRIATIONS ACT, 2020. Great efforts have been made in alleviating the devastating effects of COVID-19, which had permeated all aspects of our lives, prompting a change in legislation, lifestyles, and our understanding of emergency conditions.

<sup>3</sup> The main idea in certain articles such as that of Okay et al. (*Supra* note 10) is the comparison between the emergence and spread of monkeypox to that of COVID-19, which is clearly stated in the title, “*Another Epidemic in the Shadow of COVID-19 Pandemic: A Review of Monkeypox*”, as well as in the hypothesis of the article. It is concluded from this analysis that researchers and specialists link the spread of monkeypox with that of COVID-19, which necessitates the same review on major legal problems as previously done with COVID-19.

<sup>4</sup> Hilary Brueck, *Stop linking monkeypox to gay and bisexual men, disease experts say: This virus spreads via contact, regardless of who you are*, INSIDER Newsletters (May 21, 2022) <https://www.insider.com/monkeypox-gay-bisexual-men-affected-but-who-warns-stigma-2022-5> [<https://perma.cc/22AT-DUXW> ].



the economy, penalties, work, and so on.<sup>1</sup> The absence of jurisprudence solutions may make it difficult for the court to consider legal facts related to monkeypox.

The absence of studies on monkeypox is a dangerous sign for the field of law as it is no longer a pure science in its own right.<sup>2</sup> It is rather a science that affects other sciences.<sup>3</sup> Its theories are based on other branches of science such as medicine,<sup>4</sup> anthropology,<sup>5</sup> history,<sup>6</sup> and epistemology.<sup>7</sup> This would confuse legal judges, legislators, jurisprudence and researchers in finding the appropriate legal solutions if the disease suddenly spreads worldwide.

2. According to medical studies, monkeypox had transformed from an animal-transmitted disease to a human-transmitted disease due to the evolution of its lineage.<sup>8</sup> This has caused dread, fear and great terror in many countries.<sup>9</sup>

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<sup>1</sup> On top of inadequate studies on monkeypox in the field of law, there are also no articles on the disease in the fields of sociology, philosophy or economics. This enhances the importance of studies in this subject to shed light on its legal, social and economic repercussions.

<sup>2</sup> See e.g., Henry Cohen, *Kelsen's Pure Theory of Law y of Law*, 26.CATH.LAW.147,147.148 (1981)

that law is a self-contained science, excluding all foreign elements such as ethics and sociology).

<sup>3</sup> See Olivier Wendell Holmes, *Law in Science and Science in Law*, 12.HARV.L.REV .6, 6-7 (1899).

<sup>4</sup> Many studies, journals, and books specialize in explaining the relationship between law and medicine. See .e.g., A J. L & Med (AJLM), EUR J.HEL. L., MED.L.REV..et<sup>4</sup> Books See.e.g.. LAW AND MEDICIN (P.M.Pakshe.,1993).

<sup>5</sup> Holmes, *Supra* Note 48, at 8.

<sup>6</sup> See .*Id.* at 6-7.

<sup>7</sup> Susan S. Silbey, *Law and Science, Epistemological, Evidentiary & Relational Engagements*, 1.Mass INST.TECH.US.525, Introduction (1998).

<sup>8</sup> See ( WHO), *Monkeypox*, *Supra* note 21, at 7.

<sup>9</sup> Brueck, *Supra* note 45.



Ambiguity regarding the evolution of its strains<sup>1</sup> causes difficulties in predicting and controlling its spread, and developing a vaccine.<sup>2</sup>

This is reflected in the unwillingness of the legislation or the courts to address monkeypox if it spreads rapidly. Due to ambiguities regarding the evolution of its lineage, it is difficult to predict the timeline and method of its spread.<sup>3</sup> This renders insufficient solutions for the courts, legislators and legal jurisprudence to take the appropriate legal precautions.

3. When monkeypox first emerged, health experts ruled out the possibility of its spread in countries such as Britain and America.<sup>4</sup> However, there was a rapid spread of the disease among same-sex couples for mysterious reasons.<sup>5</sup> This naturally raised doubts and difficulties in addressing legal questions related to family legislation and judiciary on the aspects of marriage, divorce, legal separation, and the rights of spouses infected with monkeypox.

4. Although monkeypox is a different disease than the coronavirus, it has similar patterns to the latter.<sup>6</sup> Such similarities, according to health experts, include the fact that both are not subject to epidemiological rules and that both are transmitted from human to human.<sup>7</sup>

All of this may suddenly affect various social relations and subsequently break into the aspects of law, rendering the inability of the legislation, the judiciary, and

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<sup>1</sup> Okanume, *supra* note 1, at 34.

<sup>2</sup> See Brueck, *Supra* note 45 (Monkeypox has no specific vaccine, but the general smallpox vaccine could still be an effective solution for it).

<sup>3</sup> See e.g., Pinedo & Vicente, *Supra* note 30.

<sup>4</sup> *Id.*

<sup>5</sup> Davis, *Supra* Note, 14.

<sup>6</sup> Zaucha, *Supra* note 34, at 1586

<sup>7</sup> See *Id.* at 1584-1585.



legal jurisprudence in finding appropriate solutions for those effects, or causing them to make contradictory and poor judicial and legislative solutions.

However, with the advanced signs of monkeypox, it can be predicted that a legal bomb is waiting to explode without warning, leaving behind many legal problems. This bomb may also destroy certain traditional rules, and render them useless in finding solutions for the emerging legal issues. The behaviors that arise from these problems may take us back to the painful experiences of the solutions laid down by the jurisprudence, legislation and courts for the devastating effects of the Ebola virus,<sup>1</sup> cholera,<sup>2</sup> and the most recent coronavirus. Tens of millions of deaths had occurred due to the Ebola virus<sup>3</sup> and cholera<sup>4</sup> worldwide.

The monkeypox virus may represent new negative environmental signs that would cause a sudden problem for family laws, the economy, health, education, industry and others.

### *C. Monkeypox, an explosion waiting to happen in family laws*

Family laws are among those affected and changed by social, philosophical and environmental developments. It is affected by the development of social relations between spouses, as what transpired with the development of many laws

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<sup>1</sup> World Health Organization (WHO), *Ebola virus disease*, (WHO)Newsroom (23 Feb, 2021) <https://www.who.int/en/news-room/fact-sheets/detail/ebola-virus-disease>

[<https://perma.cc/Z4B4-ZXCQ>] [hereinafter (WHO), *Ebola*] The Ebola virus, previously Ebola hemorrhagic fever, was discovered in 1976 in Congo. Like monkeypox, it affects humans and is typically fatal. It entails human-to-human transmission, with an average fatality rate of 50% in 2014. However, this rate ranged between 25% and 90% in past outbreaks. Its spread in many countries including the US was due to travelers).

<sup>2</sup> See RYAN RAY, SHERRIS MEDICAL MICROBIOLOGY, 376- 377 (4th ed.2004) (Cholera, Asian cholera or epidemic cholera, is an infectious intestinal disease caused by the cholera bacterium. It entails human to human transmission via food or water contaminated with cholera bacteria, or the saliva of cholera patients. It first emerged in Africa, with a 5% mortality rate).

<sup>3</sup> See (WHO), *Ebola*, *supra* note 62 (Between 2014 and 2016, Ebola had killed 11,310 people worldwide).

<sup>4</sup> RAY, *supra* note 63, at 377 (There is an estimated 1.3 to 4.0 million cases of cholera per year, and 21,000 to 143,000 deaths per year worldwide).



including those giving rights to same-sex marriages in many countries.<sup>1</sup> Laws may change due to the rulings on the relationship between parents and children and their privacy arising from modern medical technologies such as artificial procreation, surrogacy, paternity, and filiation in same-sex marriage.<sup>2</sup>

Family law and the relationships it governs may be affected by religious or moral theories<sup>3</sup> as well as existing relationships according to current social norms and traditions.<sup>4</sup> These include the freedoms and rights between spouses, the method of education, the limits of parental authority over children, and the extent of parental interference over children. The state and its laws relate to legal relations in general and family relations in particular.<sup>5</sup>

There are clear impacts of family relations on environmental developments, of which examples we do not need to cite. Corona pandemic.<sup>6</sup>

Likewise, the monkeypox disease naturally affects family laws, marriage and divorce provisions. Its impact is manifested firstly in family laws and laws that regulate the larger areas of life, namely relationships arising from marriage, cohabitation, or partnerships, and all family relationships.<sup>7</sup> These are naturally affected by general health and biological developments.<sup>8</sup> Secondly, monkeypox itself is closely related to couples and family relationships, as the main factor for

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<sup>1</sup> Louise Melling, *Religious Exemptions and the Family*, 131 YALE L.J. 275, 275-276 (2021).

<sup>2</sup> See *Id.* at 276-279.

<sup>3</sup> See e.g., *Id.* at 280; See Also Malcolm Parke, *All in The Family: Law, Medicine and Bioethics*, 15 J. L. & MED (JLM).501, 504-505 (2008) (The complicated link between law and morals in the context of history, positivist theories and legal realism have been extensively reviewed).

<sup>4</sup> See Parke, *supra* note 68, at 505 (“[C]reed, custom, law and morality, as we know them today, cannot be distinguished from each other. Subsequently, in early monotheistic cultures, a distinction was made between human and The law given by God, but God's law imposed human law because God commanded the natural order of things”).

<sup>5</sup> See e.g., *Id.*

<sup>6</sup> PISTOR, *supra* note 38, at introduction.

<sup>7</sup> Vivian E. Hamilton, *Principles of U.S. Family Law*, 75 Fordham L. Rev. 32, 33 (2006).

<sup>8</sup> See PISTOR, *supra* note 38, at 8.





its spread is close and intimate contact<sup>1</sup> as proven by medical statistics especially among homosexuals.<sup>2</sup>

Therefore, there is logic that it greatly and directly affects family laws, and renders insufficient stability, understanding and interpretation of legal rules and judicial precedents in treating the emerging problems due to this disease.

In sum, monkeypox is a direct threat to the institution of marriage or civil partnership. Typically, infectious diseases spread among humans holistically regardless of lifestyle, as what transpired with the coronavirus which has continued to infect millions of people.<sup>3</sup> The rapid transmission of COVID-19 from one person to another has exposed all human beings to it, be it old or young, married or single, women or men, as the method of transmission only necessitates close contact with the infected.<sup>4</sup> Hence, most countries adopted the only practical solution which is general closure and the administering of vaccines for all.<sup>5</sup>

The distinct link between monkeypox and the institution of marriage and family, especially among homosexuals,<sup>6</sup> is due to two reasons. The first is related to the nature of its transmission, which typically occurs due to intimate contact between two people i.e. orally (saliva) or physically (skin to skin contact)<sup>7</sup> which are actions commonly done by spouses or intimate partners. Secondly, medical studies have shown that the spread of monkeypox is significant among

<sup>1</sup> See e.g., James J. Sejvar ET AL, *Human Monkeypox Infection: A Family Clustering the Midwestern United States*, 190 J.Infec. Dis. (JID).1833,1833-1834.

<sup>2</sup> See Boyd & Craig, *supra* note 28.

<sup>3</sup> Indicates the percentage of people infected with the coronavirus since its emergence (534,607,728), including deaths (6.358.114) until 2022. *Quoting Okyay ET AL., supra* note 10, 97.

<sup>4</sup> Thomas Sullivan, *COVID-19's Complications for Family Law Counsel: Domestic Violence And Threats to the Well-Being of Children*, 10 Ark Soc. Change & PUB Serv.1, 1-2 (2020).

<sup>5</sup> See e.g., PISTOR, *supra* note 40, at 7-8 (General quarantine, emergency activation, and general isolation are the most prominent solutions that countries have taken in the battle against the coronavirus).

<sup>6</sup> See *Infra* section III.

<sup>7</sup> See.e.g., Mccollum & Damon, *Supra* note 7, at 260-261.



homosexuals,<sup>1</sup> mainly due to the intimate closeness between homosexual partners.<sup>2</sup>

Therefore, monkeypox is an unwelcomed visitor to the homes of married people. According to health experts, in addition to taking vaccines, the spread of the disease can be curbed by isolating the patient and those suspected of carrying it, and other solutions that can only be achieved by the close partners.<sup>3</sup>

## II. IMPACT OF MONKEYPOX ON FAMILY LAWS

### *A. The legality of monkeypox: Medicinal or court jurisdiction?*

In family law, the legal value of monkeypox can be defined as the effect, role, or weight that the law or court renders to the monkeypox disease, as a factor affecting the end or survival of the marital or intimate relationship.

In determining the ways in which monkeypox affects the provisions of the family law, several aspects may be involved. Monkeypox directly affects the judgments of harm on the basis of a contagious disease for one of the spouses, which then becomes the reason for asking for a divorce i.e. on the basis of illness, separation or desertion.<sup>4</sup> It may also be caused by feelings of hatred between the spouses, or societal stigma and disgrace, as in the case with homosexuals.<sup>5</sup>

Determining the legal value of monkeypox is essential as it paves the way for the development of legal solutions to the logical perceptions above. There is also a need to know the extent of the court's response to the lawsuit filed by one of the spouses against the other due to monkeypox. Can it be considered a sufficient legal reason for opening the case? Additionally, by knowing the legal value of

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<sup>1</sup> Boyd & Craig, *supra* note 30.

<sup>2</sup> See *Infra* section III.A.

<sup>3</sup> See (WHO), *Monkeypox*, *supra* note 19, at 13-14.

<sup>4</sup> See *infra* section II.B.

<sup>5</sup> See *infra* section III.A.1.



monkeypox, the court will have a clearer vision of its effects on the institution of marriage, and whether it can be a reason for the termination of a marriage.

This section puts forth the question of whether the legal value of monkeypox lies in the medical report presented before the court, or in the judge's direct judgment and authority.<sup>1</sup> In short, is the court bounded by the medical report in evaluating the condition and seriousness of monkeypox, or does the matter remain with the court's authority and assessment of the results of the medical report as a whole?

To answer the question above, it is necessary to distinguish between two hypotheses. The first relates to the discovery of the disease and the assessment of its danger, which is the specialty of health experts such as doctors. The second hypothesis relates to the determination of the value of the disease in the continuation of the spousal relationship, and whether monkeypox can be a reason for divorce, separation or voluntary separation. This decision is made solely at the discretion of the court, without medical intervention.<sup>2</sup> As the severity of a disease is not always related to the continuation of a marital bond, the court will not necessarily respond to the request to end the said bond due to a serious illness. There is no link between the medical severity of a disease and its value by law. The court may find a disease as not so serious to the extent of ending a life. But it may be a reason for divorce or legal or judicial separation, such as in the case of sexual and personal incompatibility<sup>3</sup> or sterility, education and sexual

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<sup>1</sup> See e.g., Donald W. Miller, *On Evidence, Medical and Legal*, 10 J.AM PHIL & Surgeons.70, 71 (2005)

(Legal principles state that the court holds the discretion to accept or reject the medical report submitted by medical experts, except in certain cases).

<sup>2</sup> It is necessary for legal studies to intensify research into the issues related to monkeypox and to propose legal solutions in general. In family law in particular, such studies are necessary as they pave the way for the judiciary and reduce the burden on it by providing ready-made doctrinal solutions that can be used directly on the facts presented.

<sup>3</sup> WADE POWERS, THE COVENANT DIVORCE RECOVERY LEADER'S HANDBOOK, 166 (2009).



infidelity.<sup>1</sup> The law may not consider a serious disease such as cancer or any other medically dangerous diseases as a reason for divorce or the termination of a marital or intimate relationship.<sup>2</sup>

### ***B. Monkeypox and its relation to divorce.***

In family laws, monkeypox may trigger the provisions or laws on divorce. This is because it is a contagious and dangerous disease<sup>3</sup> related to human skin<sup>4</sup> which causes the formation of scars and the secretion of foul fluids due to the nature of its spread.<sup>5</sup> This thus may affect the application for divorce.<sup>6</sup>

In addressing the effects of monkeypox on the request for a divorce, it is necessary to firstly know the sufficiency of the general reasons for divorce as stipulated in family laws.<sup>7</sup> It is necessary to list and enumerate the types of

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<sup>1</sup> See e.g., Astri Syse & Øystein Kravdal , *Does cancer affect the divorce rate?*, 16 . Demographic RES. online j.REV.469, 471-473 (2007) (Ger) <https://www.demographic-research.org/volumes/vol16/15/16-15.pdf> [<https://perma.cc/TEC3-RXLN>].

<sup>2</sup> Some researchers concluded that cancer is not a strong reason for divorce other than sexual fertility or infidelity. Therefore, it cannot be considered as one of the causes for divorce. See e.g., *Id*, at 486-487.

<sup>3</sup> See e.g., McCollum & Damon, *Supra* Note 7, at 261 (Monkeypox could be dangerous for those not vaccinated against smallpox, as well as for those with respiratory infections, which may lead to brain shutdown and death).

<sup>4</sup> Sejvar ET AL, *Supra* note 74, at 1534.

<sup>5</sup> See Okanume, *supra* note 1, at 33.

<sup>6</sup> Divorce in the US and Britain (England and Wales) are either a fault divorce or a no-fault divorce. Our topic relates to the proving of a reason or an excuse for a divorce. But in Iraq's Islamic law, the submission of an application for divorce must be due to specific reasons as stipulated by the law. This will be explained. See *infra* cited note 91.

<sup>7</sup> The fault for divorce in the US varies according to the type of divorce. The most important reasons for fault divorce are sterility, cruel treatment, marital infidelity, sexual incompatibility, abandonment, disability, addiction, etc. For no-fault divorce, no reasons are needed to request for a divorce or an annulment. See e.g., James Schouler, A TREATISE ON THE LAW OF MARRIAGE, DIVORCE, SEPARACION, AND DOMISTIC RRLATIONS: THE LAW OF MARIAGE AND DIVORCE, 1767-1768 (M. Bender.1921). Compared to Iraq, its provisions are consistent with wrongful divorce in the US. Rather, the Iraqi law has specified cases for requesting for a divorce namely harm, severe animosity, desertion, marital infidelity, adultery with the same sex, infertility, serious infectious diseases, addiction, and imprisonment. Art 40. al Qanun al-Ahwaall al-Shaksiah [Family Law] No.188 of 1959 (Iraq).



reasons that may apply to the request for a divorce due to monkeypox, namely illness, separation, and abandonment.

*1. Monkeypox and its role in causing divorces.*

In some cases, illnesses that make it impossible for a marriage to continue may give one of the spouses the right to ask for a divorce.<sup>1</sup> The laws agree that diseases such as mental illness and infertility justify the request for an annulment or termination of a marriage contract.<sup>2</sup>

Monkeypox is not similar to sterility or insanity. Despite being a serious skin disease, it cannot be considered as a chronic or eternal disease.<sup>3</sup> Accordingly, the general rule is that it cannot be considered a reason for filing a divorce.

However, monkeypox can cause congenital malformations of the skin, or exacerbate and afflict the husband with chronic or fatal diseases or brain cessation<sup>4</sup> and subsequently turn into a disease that prevents the continuation of married life. In such case, can it then be considered a disease that justifies the request for a divorce by the uninfected spouse?

To answer this, we must refer to professionals or health experts, as well as distinguish between several logical assumptions namely:

- 1) Although the spouse may contract monkeypox, it did not cause real harm and the disease was not transmitted to the other spouse. The absence of real

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<sup>1</sup> See e.g., NIHARA K. CHOUDHRI, THE COMPLETE GUIDE TO DIVORCE LAW, 10-11 (2004).

<sup>2</sup> Quoting JOHN VENTURA, DIVORCE FOR DUMMIES, 16 (3th ed. 2009) Compared with Iraqi law, it has been stipulated that in addition to insanity and sterility, other diseases such as Melanin and Leprosy are also reasons for requesting for a divorce. Qanun al-Ahwaall al-Shaksiah, *Supra* note 96.

<sup>3</sup> See Sejvar ET AL, *Supra* note 74, at 1535; AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE (asrm), INFERTILITY: AN OVERVIEW 6 (2017) (The principle of infertility is that it is eternal. There are many medical and technical treatments for infertility, but there are also many cases with no cure) [hereinafter (asrm)].

<sup>4</sup> Syse & Kravdal, *Supra* note 89, at 472.



harm means that no major symptoms had appeared, or that the infected spouse had recovered from it during the incubation period, which health experts estimated to be within 28 days,<sup>1</sup> without any lingering effects to the infected spouse. In such a case, monkeypox cannot be considered a reason for requesting a divorce from a legal and logical point of view. In this case, it is a simple illness that does not cause any real harm, in terms of divorce with fault.<sup>2</sup> But in terms of divorce with no fault, then it is possible to ask for a divorce with this assumption. This is because the divorce is not due to the husband being infected with monkeypox, but rather due to the nature of this type of divorce which does not require a strong reason.<sup>3</sup>

Sometimes however, despite not causing any real harm, the severity of the patient's infection to the skin, anus, mouth or face<sup>4</sup> may lead to permanent or temporary alienation and disgust from the other spouse, which provokes uncertainty about the response to a divorce application for this reason. But the supposed legal reality renders not to respond to such a request if the

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<sup>1</sup> Alakunle ET AL., *supra* note 19, at 2.

<sup>2</sup> See e.g., Ventura, *Supra* note 97, at 22 (Divorce with fault requires the presentation of real evidence to convince the court to respond to the request submitted; otherwise, it will reject the request. The evidence varies according to the nature of the fault) Compare With Iraqi Law, AHMED AL-KUBAISI, AL-WAJEEZ FEE SHARHH AL-QANON AL-AHWALL AL-SHAKSIAH AL- IRAQI [ A Summary of the explanation of Family Law], 93-94 (2 ed.2015) (In order for the court to approve the request for a divorce due to illness, a medical report must prove that the illness is dangerous and that it is not possible to continue married life with the infected spouse. This is not achieved in every case, only for complex diseases such as infertility and organic sexual diseases).

<sup>3</sup> See e.g., Alan H. Frank ET AL, *No Fault Divorce and the Divorce Rate: The Nebraska Experience—An Interrupted Time Series Analysis and Commentary*, 58 Neb.L.REV.1,33-34 (1978) (The purpose of the no-fault divorce, which is applied by all US states, is not based on a reason or justification. Rather, it is sufficient to submit a petition to the court to judge the separation between the spouses) Compared with Iraqi law, the Iraqi law does not recognize this type of divorce, and all Islamic laws only address divorces on the basis of a mistake, which requires the issuance of a voluntary or involuntary mistake of the other spouse, so that it can be judged. See e.g., AL-KUBAISI, *supra* note 101, at 91-101.

<sup>4</sup> See Alakunle ET AL., *supra* note 19, at 3.





divorce was a mistake, as it is not considered a grave harm that prevents the continuation of the marriage.<sup>1</sup>

The second hypothesis is that monkeypox may lead to the transmission of the infection to the other spouse due to the frequent and close contact between them.<sup>2</sup> What is the ruling on requesting a divorce by the affected spouse?

The general rule is that until there is real evidence of a wrongful divorce, there must be an intentional or unintentional bad act by one of the spouses against the other which causes physical, psychological or economic harm.<sup>3</sup> As for divorce due to illness, the matter depends on two conditions namely: 1) the severity of the the disease afflicting the infected spouse,<sup>4</sup> and 2) the intent involved and whether it is a bad act by the inflicted spouse.<sup>5</sup>

Significant health damage may be experienced by the other spouse due to being infected by the afflicted spouse.<sup>6</sup> For example, the infection may lead to the development of a chronic disease that threatens the other spouse's life, or affects other parts of the body similar to the accidental effects of COVID-19 which lead to damages to the nerves, vocal cords, heart and other chronic diseases.<sup>7</sup>

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<sup>1</sup> See e.g., *Frank ET AL*, *Supra* note 102, at 29-30; *Ventura*, *Supra* note 97, at 20 (Even a divorce without fault requires the court to prove a simple reason for the divorce as a divorce is not just a desire or a fleeting whim, but a charter that must be given respect).

<sup>2</sup> *Pinedo & Vicente*, *Supra* note 30.

<sup>3</sup> The general rule in a wrongful divorce is that the applicant must provide factual evidence of a bad or wrong act on the part of the other spouse. See e.g., *Frank ET AL*, *Supra* note 102, at 27.

<sup>4</sup> See *CHOUDHRI*, *Supra* note 96. At 8-9.

<sup>5</sup> See *Id.*

<sup>6</sup> Some US States consider certain infectious diseases, such as vector diseases and sexually transmitted infections, as a reason for divorce. This reason can be measured against monkeypox when it is transmitted due to infection from the other spouse. See *Id.* at 10 ([I]llinois also offers uncommon grounds for divorce, whereby a person can apply for divorce when her spouse exposes her to a sexually transmitted infection).

<sup>7</sup> *Frederic Jungbauer ET AL*, *Case Report: Bilateral Palsy of the Vocal Cords After COVID-19 Infection*, 12. *Frontiers J. Neurology*.2 ,3-4 (2021).

<https://www.frontiersin.org/articles/10.3389/fneur.2021.619545/full> [ <https://perma.cc/E22B->





Intentional infection of monkeypox is also possible such as when the patient does not take the necessary medical precautions like staying in quarantine or not taking the vaccine or medicines. In such case, the injured spouse may file for divorce due to the significant effects afflicted upon him, similar to the rare cases of COVID-19 as previously explained.<sup>1</sup>

The third hypothesis is that although the infection may be transmitted due to the monkeypox virus, it does not cause significant harm to the other spouse (which is the common case).<sup>2</sup> Infection occurs when the infected spouse touches the other person or has sex with him, or via the transmission of oral saliva by kissing.<sup>3</sup>

With such assumption, monkeypox cannot be considered a reason for requesting a divorce or separation, as it does not render it impossible for the marriage or intimate partnership to continue.<sup>4</sup> Logically, an annulment is useless if both spouses have already contracted the disease. If the court decides to grant the separation due to illness, there is no benefit when both parties have contracted the disease, unless there are other justifications besides the risk of infection.

## 2. Monkeypox and marital separation

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[ZH29](#)] (Some studies have examined the chronic side effects of COVID-19 which may cause damages to organs such as the lung, vocal cords, heart clots, and others).

<sup>1</sup> See *Id.*

<sup>2</sup> See *Okyay ET AL, Supra* note 10, at 96 (Monkeypox is classified as a low-risk infectious disease unless it mutates, as what occurred with the coronavirus. About 90% of those infected with it only exhibited minor symptoms).

<sup>3</sup> See *Id.*

<sup>4</sup> See *CHOUDHRI, Supra* note 96. At 7 (Nearly all states in the US allow couples to divorce if they are no longer willing to live together. Some states refer to this as “marriage that breaks down”, “irreconcilable differences” or “incompatible with temperament”. It usually represents grounds for divorce, whereby the spouses will need to prepare and sign an affidavit stating that the marriage is irreparably dissolved).



Separation between spouses<sup>1</sup> occurs when couples separate and refuse to live together without a divorce.<sup>2</sup> Married couples may separate as a first step to divorce, to gain new confidence about the marriage, and to determine whether the divorce is justified.<sup>3</sup> A separation is typically an alternative to divorce.<sup>4</sup>

The reasons for separation differ from the reasons for divorce, such as due to economic or religious factors, or to restore confidence in the marriage.<sup>5</sup>

The idea of marital separation in the case of monkeypox may present a vital application. Marital separation fits the purpose of preventing the spread of monkeypox. Health experts have emphasized on the need to isolate the infected person for a period of time from others.<sup>6</sup> The motivation for separation also increases the psychological readiness of the non-infected person on the basis of preventing the spread of the virus.<sup>7</sup>

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<sup>1</sup> See e.g., David Fitzpatrick, *Divorce and Separation in Modern Irish History*, 114 Past & Present. 172, 196 (1987) (A separation may be legally submitted to the court, consensual by way of an agreement between the parties outside the court, or de facto. The separation can be initiated informally, or with a formal agreement submitted to the court which excludes alimony and custody of fatherhood and motherhood, unlike divorce which includes all of the aforementioned).

<sup>2</sup> See e.g., Graham B. Spanier & Elaine A. Anderson, *The Impact of the Legal System on Adjustment to Marital Separation*, 41 J. Marriage & FAM (JMF). 605, 605 (1979).

<sup>3</sup> See *Id.*

<sup>4</sup> See *Id.*

<sup>5</sup> See *Id.* at 606-607; See Also Robert S. Weiss, *The Emotional Impact of Marital Separation*, 8 J. SOC. 135, 145 (1976) (Separation poses an emotional effect on the couple similar to the effect of divorce, but some argue that emotional separation could strengthen the marriage and serve as a reason to continue being married).

<sup>6</sup> (WHO), *Monkeypox*, *Supra* note 21, at 2; Mccollum & Damon, *Supra* note 7, at 32 (Cases of monkeypox infection should be recorded, followed by the isolation and movement restriction of the infected).

<sup>7</sup> Sejvar *ET AL*, *Supra* note 74, at 1838.



This may lead to a separation by the reality of the situation or agreement between the spouses due to infection.<sup>1</sup> This is especially crucial since monkeypox has spread significantly among intimate partners<sup>2</sup> particularly among homosexuals.<sup>3</sup>

### 3. Monkeypox and abandonment

The definition of desertion differs from one law to another, but it is generally delineated as a behavior in which both spouses are independent of each other in the home front while still maintaining the bond so that neither one can conclude a new marriage.<sup>4</sup> Abandonment is voluntary without the need for consent from the other spouse; therefore, abandonment can be a cause for divorce by fault.<sup>5</sup> Abandonment results in financial consequences such as entitlement to alimony, or non-financial ones such as entitlement to custody and upbringing of the children.<sup>6</sup>

In Islamic laws, the husband's abandonment of his wife only relates to sex and separation in bed.<sup>7</sup> It is not necessary for him to leave the house permanently, or to abandon his wife, or to leave the house and be absent.<sup>8</sup>

The hypothesis of divorce for desertion due to monkeypox can be explained in the context of the idea of abandonment associated with being away from the other

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<sup>1</sup> See Okanume, *supra* note 1, at 33.

<sup>2</sup> See Sejvar *ET AL*, *Supra* Note 74, at 1833-1834.

<sup>3</sup> See *infra* III.A.2.

<sup>4</sup> See WILLIAM STATSKY, *FAMILY LAW*, 188 (5th ed.2008).

<sup>5</sup> *Id.*

<sup>6</sup> See *Id.* at 189.

<sup>7</sup> See e.g., AL-KUBAISI, *Supra* note 101, at 134, *Compare With* CHOUDHRI, *Supra* note 96, at 10 (However, the refusal to have sex with the other spouse can be desertion, and in some cases considered a ground for divorce).

<sup>8</sup> See IBRAHIM ABDEL RAHMAN IBRAHIM, *ALWASEET FEE SHARH KANON AL AHWAL AL SHAKSIAH. ALZAWAAJ, ALFIRKAH, HOKOK ALAKREBAA* [The Mediator in Explaining Family Law, Marriage Law, Separation and Relatives' Rights], 213 (1999) (Iraq).



spouse in terms of sexual relations, closeness, and sleeping in the room only.<sup>1</sup> However, this hypothesis needs further elaboration.

As desertion due to the infection of monkeypox may depend on the necessity of distinguishing between desertion from the infected spouse, or desertion under the pretext of illness by the healthy spouse in order to avoid from contracting the disease, it cannot be considered as a reason for requesting a divorce or ending the intimate relationship. As the incubation period for the virus does not exceed 28 days,<sup>2</sup> the conditions for abandonment are not met, especially when there is no intention of absence without reason. More importantly, in the Iraqi judiciary, the abandonment of the wife in terms of sexual relations is an illegal reason for a period of two years.<sup>3</sup>

Hence, sexual separation from the spouse due to monkeypox infection cannot be deemed as desertion and used for justifying the application of a divorce, unless the separation is for a long and unjustified period as defined by law.<sup>4</sup>

Separation of the bed and room due to monkeypox infection can be interpreted as sanitary isolation or confinement of the infected spouse.<sup>5</sup> Such isolation or confinement cannot be deemed as desertion which justifies divorce, as long as the conditions for abandonment are not met.<sup>6</sup>

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<sup>1</sup> An offer that is consistent with Islamic law, which considers desertion to take effect as soon as one stays away from having sex with the wife, even if they are in the same house. *See e.g., AL- KUBAISI, supra* note 101, at 134.

<sup>2</sup> *See e.g., Okanume, supra* note 1, 34.

<sup>3</sup> *See e.g., Mhkamat al-Tamyiz Al-Itihadiya* [Federal Court of Cassation]. Ahwaall Shaksiah [family law], decision No: 1613 , 2008, Alnashra al-Qaiyah [ Judicial Report], Vol.56.322 (Iraq); *Compare* For example, the desertion provision under Alabama law requires for the spouse to have immigrated “without intent to return” and the other spouse filing for “divorce fault” after one year of the spouse’s absence. *See Ala. Code* § 30-2-1 (a)(3).

<sup>4</sup> *See Cited Supra* Note 132.

<sup>5</sup> *See (WHO), monkeypox, Supra* note 21, at 2.

<sup>6</sup> Abandonment and isolation differ in terms of the legitimate justification. Abandonment and isolation are similar whereby both lead to sexual and physical separation between spouses,



As for monkeypox infection, the uninfected spouse can stay away from the infected spouse for a long period<sup>1</sup> especially when accompanied. The act of desertion only occurs according to the conditions mentioned by the law.<sup>2</sup>

### C. *Monkeypox and Custody of Children*

Custody of children refers to the legal provisions related to parental authority and guardianship over young children.<sup>3</sup> Family laws typically regulate the subject of custody by defining the scope of the legal relationship between the parent or guardian and the child under his care.<sup>4</sup>

Child custody can be either legal i.e. the custodian having the right to make important decisions regarding the child<sup>5</sup> or physical whereby one of the parents is granted the right and duty to provide for the child.<sup>6</sup>

Another type of child custody that arises following the parents' divorce, annulment of marriage, separation, death of either one, or adoption is the "single custody" whereby the custody of children are given to one of the parents.<sup>7</sup> Divorced or separated parents who want to share child custody may file for "joint

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except that abandonment occurs due to bad, illegal, and immoral acts with no intent of return. Meanwhile, health-based isolation commonly has a legal and moral basis.

<sup>1</sup> See Cited *Supra* Note 132.

<sup>2</sup> In this case, the request for divorce is not due to monkeypox infection, but rather due to the availability of legal conditions for desertion as stipulated in the decision of the Iraqi Court of Cassation and the Bama Law (cited *supra* note 132). Among the conditions is absence without a legal excuse for two years and others.

<sup>3</sup> JENNIFER K. DIERINGER ET AL, *FAMILY LAW ADVOCACY FOR LAW AND MODERATE INCOME LITIGANTS*, 245-246 (2 ed, 2008).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See *Id.* at.245; See Also Joan B. Kelly, *The Determination of Child Custody*, 4. *Fut. CHILD & DIVO*.121,123 (1994) (This refers to the type of custody that obliges the custodian to provide a suitable place of residence for the child. It may be joint custody when the marriage takes place, or separate custody when the spouses separate).

<sup>7</sup> See John G. Taussig J& John T. Carpenter IV, *Joint Custody*, 56 N. D. L. REV.223, 224 (1979) (Sole custody is when only one of the parents has custody of the child. Commonly, sole custody refers to when a parent has sole physical custody of the child).



custody”<sup>1</sup> which is determined based on “the best interests of the child”.<sup>2</sup> Following the ratification of the United Nations Convention on the Rights of the Child in most countries, several amendments were made to the provisions of custody.<sup>3</sup>

Therefore, if one of the parents is infected with monkeypox, the legal provisions for child custody may be affected whether during the marriage or after the divorce or separation. When residing in the same house, the spouse infected with the monkeypox virus may pose harm to the child; hence, the child must be isolated from the said parent or family member. As such, the infected custodian may lose his ability to take care of the child for a period of time, which could be prolonged if the disease worsens.<sup>4</sup> In the case of single or joint custody, the matter is even

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<sup>1</sup> See Emma Fransson ET AL., *Why should they live more with one of us when they are children to us both? Parents' motives for practicing equal joint physical custody for children aged 0–4*, 66 CHILD. & YOUTH SERV. REV. 145, 145-155. ("Joint parenting", "joint residence", "joint guardianship", "joint custody or joint physical custody" all refer to the same meaning. It refers to both parents sharing the responsibility of caring and providing for their children following their divorce or separation. Joint custody is based on the principle that children have the right to live with and benefit from their parents, and that no child should be separated from either parent. By contrast, joint marriage/joint parental marriage refers to when the whole family resides in the same house. An exceptional form of joint custody is the bird's nest nursery, whereby the child lives in the same house but the parents take turns living with him in the said house).

<sup>2</sup> UN High COMMISSIONER FOR REFUGEES (UNHCR), UNHCR GUIDELINES ON DETERMINING THE BEST INTERESTS OF THE CHILD, 14 (2008) (The principle of “best interest” is a crucial legal principle which states that all legal decisions related to child custody must be based on the child’s best interest namely providing happiness, security, well-being, physical safety, proper environment, quality education, and basically meeting all his needs).

<sup>3</sup> See SHARON DETRICK, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, 176-178 (1999) (The United Nations Convention on the Rights of the Child introduced several new provisions in general including parental responsibility, residence and communication, or also known as “escorting”, “guardianship”, or “paternity time” in the United States replacing the concepts of “custody” and “access”. In some Member States, instead of a parent having 'custody' or 'access' to a child, the child is now said to be a 'resident' or 'in contact' with the parent).

<sup>4</sup> See Alakunle ET AL., *supra* note 19, at 3-4 (Health experts have confirmed that the monkeypox virus can live from 7 to 28 days, but the infection may be exacerbated and prolonged for months or even years especially if the patient suffers from previous health problems such as a stroke or severe lung disease).



more severe and complicated because it could result in the prevention or reconsideration of the parents' right to custody, particularly joint custody.<sup>1</sup>

The application for custody could then be disrupted, changed, or reconsidered against the infected spouse, on the basis of the child's best interest.

### III. MONKEYPOX AND HOMOSEXUALITY LAWS

#### A. *The link between monkeypox and homosexual laws*

Monkeypox is linked to homosexuality as a result of the negative stereotypes regarding sexual promiscuity, as well as the specificity of the spread of the monkeypox virus between intimate partners and legal spouses.

##### 1. *General reasons*

Every disease has a cause, and due to public fear and panic, it causes people to analyze and link global epidemics or diseases with a specific group of people such as gays or blacks in relation to AIDS or Asians in relation to COVID-19.<sup>2</sup>

The real reason for linking some epidemics with homosexuality is "homophobia"<sup>3</sup> whereby homosexuals become the subject of accusations, hatred and discrimination for every event or global epidemic linked to intimate relationships.<sup>4</sup>

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<sup>1</sup> Usually, joint custody is based on a prior agreement or consent between the divorced or separated parents to share custody of the child, under the supervision of the court. *See e.g. THOM TESSA, CUSTODY WITHOUT COURTS*, 17 (2017).

<sup>2</sup> *See* Lauren Moss & Josh Parry, *Monkeypox and gay men: Separating stigma from health advice*, BBC NEWS (28 may, 2022) <https://www.bbc.com/news/uk-61609888> [<https://perma.cc/YQ67-LZ6D>].

<sup>3</sup> *See* MARK MCCORMACK, *THE DECLINING SIGNIFICANCE OF HOMOPHOPIA*, 35-36 (2013) (Homophobia means 'obsession with homosexuals' or people who are identified or considered as lesbians, gays, bisexuals, or transgender (LGBTQ). It is also defined as the contempt, disdain, or hatred directed against homosexuals and often caused by religious and social beliefs).

<sup>4</sup> *See* Skylar Baker-Jordan, *Is your monkeypox panic homophobic? It just might be*, *Indep.* (2 Jun, 2022) <https://www.independent.co.uk/voices/monkeypox-gay-men-close-saunas-bars-b2092792.html> [<https://perma.cc/5BBT-92BM>].





Homophobia has created numerous negative stereotypes. This negative image reminds us of several global events similar to those that link the spread of monkeypox to homosexuality. We are reminded of the incidents that accompanied the wave of pneumonia which occurred among gay men infected with AIDS some 40 years ago.<sup>1</sup> At the time, there was a great uproar that AIDS was caused by homosexuals, which directly affected its containment.<sup>2</sup> Until a clear picture of AIDS was revealed, homosexuals were acquitted of the direct charges against them until countries were able to develop a clear policy for its treatment.<sup>3</sup>

One of the general reasons linking epidemics and homosexuality is similar to the racial discrimination against Asians due to the coronavirus pandemic. With the latter, Asians had been exposed to social stigma and unjustified hatred due to claims that the disease had originated from China.<sup>4</sup>

Likewise, homosexuals are being accused of spreading the monkeypox virus. This prompted the United Nations to denounce the media campaign against homosexuals.<sup>5</sup>

## 2. *Special reasons*

Recently, there is a great uproar related to the discovery of multiple confirmed and suspected cases of monkeypox infection in several European countries and

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<sup>1</sup> See e.g., Moss & Parry, *supra* note 149.

<sup>2</sup> See Titanji & Makofane, *supra* note 3.

<sup>3</sup> *Id.*

<sup>4</sup> Quoting *Id.* ( In the US Census Bureau's Household Pulse survey, non-Spanish Asian households were twice as likely to report of having inadequate food during the pandemic due to fear of discrimination or hate crimes).

<sup>5</sup> (WHO), *monkeypox*, *supra* note 21, at 4 (The World Health Organization issued a statement that "stigmatizing groups of people for a disease is totally unacceptable" and that linking monkeypox to homosexuality "could be a barrier to ending the outbreak, as it may prevent people from seeking healthcare").



North America. The cases were found in the United Kingdom, Spain, Canada and the United States, and most were prevalent among homosexuals.<sup>1</sup>

Among the special reasons linking monkeypox to homosexuality are:

- a. The spread of monkeypox in America, Britain, Spain and Canada had mainly involved homosexuals.<sup>2</sup> The first case involved a Spanish gay club (Suona), followed by similar repeated cases.<sup>3</sup>
- b. Studies have proven that there is a noticeable increase in the spread of this disease among homosexuals.<sup>4</sup> This had prompted a large media campaign against homosexuals.<sup>5</sup> However, some health experts denied the existence of a direct relationship between the spread of monkeypox and homosexuality.<sup>6</sup> Scientific and logical data associates monkeypox not only to homosexuals, but also to intimate partners and spouses, whether of the same or opposing sex.<sup>7</sup> This is because the method of transmission involves intimacy and close contact between couples i.e. the infected person and the partner.<sup>8</sup>

This confirms the need for more research and investigation on the impact of monkeypox on family, marriage and divorce laws, and the testing of these laws and their ability to mitigate the impending legal bomb.

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<sup>1</sup> (ecdc), *supra* note 28, at 7-8.

<sup>2</sup> *Id.*

<sup>3</sup> See e.g., Thrasher, *supra* note 12 (Sauna, a gay bath in Spain, was the direct source of the spread of monkeypox among gays in Europe).

<sup>4</sup> See Boyd & Craig, *supra* note 30.

<sup>5</sup> Titanji & Makofane, *supra* note 3.

<sup>6</sup> See e.g., *Id.*; (WHO), *monkeypox*, *supra* note 21, at 3 (There is yet any medical study proving the link between monkeypox and homosexuality. It is in fact a general disease transmitted via close physical contact, saliva, and other means).

<sup>7</sup> See Thrasher, *supra* note 12.

<sup>8</sup> See *Id.*



## ***B. Monkeypox and its impact on homosexuality laws***

The public campaign against homosexuality due to the spread of monkeypox<sup>1</sup> along with the condemnation of the United Nations on such anti-gay campaigns<sup>2</sup> may affect the laws on homosexuality. The impact may occur on two aspects namely: 1) the effectiveness of the implementation of homosexual laws, and 2) the philosophy of homosexual laws. These are elaborated further in the following sub-sections.

### *1. Monkeypox and its impact on the effectiveness of homosexual laws.*

The massive media campaign against homosexuals for spreading monkeypox and against same-sex marriages<sup>3</sup> has directly affected the effectiveness of the implementation of homosexuality laws. This is because these have been fragile laws from the very beginning, due to the strong opposition from anti-gay movements<sup>4</sup> and the way homosexuals live their lives in fear.<sup>5</sup>

The massive anti-homosexual campaigns accusing gays of being the source of diseases spreading<sup>6</sup> had rendered them to live in a low-profile manner.<sup>7</sup> This in turn had led to difficulties in controlling diseases and epidemics as well as inaccuracies in data collection regarding the spread of the diseases.<sup>8</sup>

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<sup>1</sup> Titanji & Makofane, *supra* note 3.

<sup>2</sup> See cited *supra* note 156.

<sup>3</sup> See Thrasher, *supra* note 12.

<sup>4</sup> Homosexuality laws have undergone various obstacles. After a certain period during when homosexuality was largely prohibited, a number of intellectual, social, religious, medical and political debates were held. The infamous 2016 shooting incident marked a turning point in the legislation of laws to legalize homosexuality. See e.g., Bonnie J. Morris, *History of Lesbian, Gay, Bisexual and Transgender Social Movements*, ABA (Int. Date: 20 Jun, 2022. 11.45 PM.) <https://www.apa.org/pi/lgbt/resources/history> [<https://perma.cc/PUF6-SH7W>].

<sup>5</sup> See Titanji & Makofane, *supra* note 3.

<sup>6</sup> See *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*



Historical experiences and homophobia had led to the classification of HIV infections (AIDS) as being caused by homosexuals in the 1980s, which was later proven untrue by further studies.<sup>1</sup> Due to this, homosexuals with AIDS at the time had decided to stay hidden instead of seeking treatment. The societal stigma inflicted upon them had resulted in difficulties in controlling the spread of the disease, until the accusations were later proven untrue.<sup>2</sup>

A study in southern USA had proven that the HIV/AIDS epidemic had destroyed the gay community, which is mostly made up of black and Latin people, owing to their lack of commitment to healthcare and the fear of seeking treatment due to the stigma that would be inflicted upon them if their identities were revealed.<sup>3</sup>

Some health experts have linked what is happening today with monkeypox to what happened decades ago with AIDS,<sup>4</sup> namely the focus on homosexual men as the cause of the spread of both diseases.<sup>5</sup> However, homosexuality has been proven to be not associated with either monkeypox or AIDS.<sup>6</sup>

The historical experience with AIDS and the unfavorable public opinion against homosexuals have caused this group of people to lead a secret life, away from the stigma of the society.<sup>7</sup> The same issues that befell homosexuals who contracted

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<sup>1</sup> *Morris, Supra* note 168.

<sup>2</sup> *See Titanji & Makofane, supra* note 3.

<sup>3</sup> Quoting *Id.* ("In a 2011 Kaiser Family Foundation survey of Americans about HIV/AIDS, despite downward trends, 40% of the population surveyed still sees a significant amount of discrimination towards those living with HIV and AIDS. This discrimination still exists in black communities where 57% expressed dissatisfaction with the preparation of food by a person living with HIV. This is further exacerbated with 47% of society believing that homosexual behavior is morally wrong").

<sup>4</sup> *See Thrasher, supra* note 12; *See Also Morris, supra* note 168.

<sup>5</sup> *Titanji & Makofane, supra* note 3.

<sup>6</sup> (WHO), *Monkeypox, supra* note 21, at 5.

<sup>7</sup> *See Morris, supra* note 168.



AIDS decades ago may happen again with homosexuals who contracted monkeypox today.<sup>1</sup>

In conclusion, homosexuals decide to lead their lives without adhering to the laws enacted to regulate their relationships in terms of marriage, divorce, and rights distribution due to societal stigma. As such, these laws lose their practical value and would in turn cause further problems with the prevalence of monkeypox among homosexuals today. Such problems include the loss of rights and chaos in the rising phenomenon of homosexuality.

## 2. Monkeypox and its impact on the philosophy of homosexual laws.

In general, legislation is needed to justify the establishment of this law in reality.<sup>2</sup> Such law is crucial due to the emergence of this phenomenon which requires the Parliament or the judiciary to enforce it based on the existing state philosophy.<sup>3</sup>

The laws on homosexuality had undergone a difficult period,<sup>4</sup> with numerous obstacles and prohibitions.<sup>5</sup> Many countries today are facing the issue of permissibility,<sup>6</sup> as homosexuality has turned into a global social phenomenon that requires its own regulation and codification by special laws, both permitting and preventing it.

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<sup>1</sup> See *.Id.*

<sup>2</sup> DE MONTESQUIEU, THE SPIRIT OF LAW 411-412 (Thomas Nugent, Trans. 1752) (2011).

<sup>3</sup> *Id.*

<sup>4</sup> See cited *supra* note 168.

<sup>5</sup> See Morris, *supra* note 168.

<sup>6</sup> Many countries have enacted laws regulating same type passports, thus representing a major turning point in how homosexuality is dealt with worldwide. See e.g., David Masci ET AL., *Same-Sex Marriage Around the World*, Pew RES.CTR. (28 Oct. 2019)

<https://www.pewresearch.org/religion/fact-sheet/gay-marriage-around-the-world/>  
[<https://perma.cc/3PWT-LBRL>].



However, the world is facing the reality of homophobia<sup>1</sup> associated with the spread of monkeypox. If the anti-homosexual public opinion wins over its claim in linking the spread of monkeypox to homosexuals,<sup>2</sup> or if medical studies manage to prove that homosexuals are in fact the cause or the main reason for the spread of the monkeypox virus,<sup>3</sup> then the legal society needs to ponder upon several questions: Does this affect the existence of laws that regulate and allow homosexuality? Does the law need to be abolished and homosexuality banned? Are states committed to the need to re-understand and amend these laws?

The answers to all these questions depend on the fundamental right to marry or to associate with the same sex.<sup>4</sup> Whether or not this right is recognized depends on the philosophy on which it was originally based; is it ideal or situational? Hence, there is a need to briefly review the philosophical theories that examined the origins of the emergence of rights in law. There are two theories in this regard namely the ideal analytical normative theory, and the positivist theory in law.<sup>5</sup>

The normative philosophy theory asserts that rights can either be divine based on the “theological ideal” philosophy,<sup>6</sup> or natural as represented by “the ideal of natural law” philosophy.<sup>7</sup>

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<sup>1</sup> See cited *supra* note 150 .

<sup>2</sup> The WHO was forced to intervene and denounce the attack on homosexuals. See cited *supra* note Text 162.

<sup>3</sup> Some health experts also made the same conclusion owing to the significant increase in monkeypox infections among homosexuals. See Boyd & Craig, *supra* note 30.

<sup>4</sup> Metaphorically, this paper postulates that the “right of same-sex marriages” denotes the discussion about the extent to which same-sex marriages are deemed as a right that can be claimed before the court.

<sup>5</sup> See ANDREI MAMORE & ALEXANDER SARCH, THE NATURE OF LAW, 54-61 (2019) (The philosophy of law can be analytic (positivist) or normative (ideal) jurisprudence. Analytical jurisprudence entails an examination of the nature of the law via the identification of essential law characteristics, whilst the ideal normative philosophy entails the setting of legal rules based on certain criteria, such as morals, religion and so on).

<sup>6</sup> See ROSCOE POUND, AN INTRODUCTION TO THE PHILOSOPHY OF LAW 1-3 (2 ed, 1953).

<sup>7</sup> *Id.* at 2.



Whether divine or natural, the right to engage in same-sex relationships is denied because the act of homosexuality is deemed as abnormal behavior<sup>1</sup> and forbidden by the divine laws.<sup>2</sup>

According to the aforementioned philosophies, same-sex relationships are not a natural or divine right and thus cannot be accepted in all forms. Instead, it is a right created by the state as it sees fit, and hence it is possible to reconsider, repeal or amend the laws of homosexuality. Homosexuality promotes the spread of monkeypox as the practices related to this phenomenon are largely concealed, as long as the enactment of laws is linked to the will of the state and of higher interests and national security, instead of to natural or religious rights.

However, the “positivism” approach views this matter differently. The positivist philosophy of various schools, be it the utilitarian positivism of Jeremy Bentham<sup>3</sup> and John Austin,<sup>4</sup> or the realist positivism of Herbert Hart<sup>5</sup> and Ronald Dworkin,<sup>6</sup>

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<sup>1</sup> See ALEXANDER DMITRENKO, NATURAL LAW OR LIBERALISM? GAY RIGHTS IN THE NEW EASTERN EUROPE 16-17 (2001).

<sup>2</sup> See Melling, *supra* note 66, 278.

<sup>3</sup> POUND, *supra* note 191, 14 (Bentham deemed the "basic axiom" in law as the only criterion for the greatest happiness for the greatest number, the measure of right and wrong).

<sup>4</sup> See e.g., W. L. MORISOR & ANDERWE ALTMAN, ARGUING ABOUT LAW: AN INTRODUCTION TO LAW PHILOSOPHY 69-70 (2nd ed., Belmont, CA: Wadsworth, 2001) (The Austin School is based on an excessively formal situation, deeming the law as a product of the ruling will and the state and its son regardless of the dimension behind the will of the ruler).

<sup>5</sup> Herbert Hart's legal contributions are many and crucial, giving a new and complex concept of law. His key contribution is his critique of John Austin's theory that the law is the order of the ruler supported by threat and punishment. He distinguishes between primary and secondary legal rules, in which a primary rule such as criminal law governs behavior, whilst a secondary rule governs the procedural methods by which primary rules are enforced, such as prosecution and so on. Hart enumerated the three secondary rules, the basis of recognition, and many of the ideas presented in his book "The Concept of Law". See H.L.A.HART, THE CONCEPT OF LAW 92- 114 ( 2 ed, 1994).

<sup>6</sup> Durkin made crucial contributions to the philosophy of law such as “the theory of prediction”, “the right answer”, “the moral reading of the American Constitution”, and “law as integrity”. He is deemed as the leading critic of traditionalists, calling for the distinction between law and morality. See e.g., Norman E. Bowie, *Taking Rights Seriously. By Ronald Dworkin*, 26.CATH.Univ.L.REV. 908, 916-917 (2011).





emphasizes that rights arise realistically and are based on what people desire in a specific time and place.<sup>1</sup> It also asserts that the rights of people must be viewed away from the moral, metaphysical, natural or rational standards.<sup>2</sup>

Based on the abovementioned positivist philosophies, the right of same-sex relationships is positive, factual, and legal. The state has no choice but to approve it without subjecting it to any specific standards. Many positivists defend homosexuality and the right to same-sex relationships including Bentham, Hart, and Durkin.<sup>3</sup>

The most accepted belief is that, regardless of whether monkeypox is actually spread by homosexuals, the origin of the rights granted to them and the laws that protect them remain unaffected as long as this right has supporters and practitioners who are homosexuals. Although the spread of the disease must be dealt with under general laws such as the emergency law, it does not touch the origin and essence of the right. This is similar to when dealing with certain exceptional circumstances without affecting the rights of the workers, borrowers and others. But if the right to same-sex relationships is being based on idealistic moral or religious standards, it is not possible to accept these laws even if they transform into human necessities or a human right. Subsequently, the state that adheres to any of the ideal philosophy schools of thought would not be able to legislate the law in terms of its origin or legislate it out of necessity. Ultimately, it may get cancelled on its own will.

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<sup>1</sup> See HART, *supra* note 197, at 199.

<sup>2</sup> See Bowie, *supra* note 198, at 917.

<sup>3</sup> Quoting DMITRENKO, *supra* note 193, AT 20-23.



## Conclusion

The history and nature of the transmission of monkeypox, which began in an African family and then noticeably spread among homosexuals at the present time as shown by scientific studies provide evidence that it is linked to familial relationships and intimate partners; hence, it affects the explosion of legal problems in fundamental family laws. It affects the provisions of divorce without error and may be a sufficient reason to request for a divorce and a divorce by mistake. This is due to the possibility of monkeypox evolving into a chronic or serious disease which makes it impossible for a couple to continue their marriage. It also directly affects the arrangement of a joint custody of their children, or the right of the infected spouse to obtain custody, or becomes a valid reason for a divorce or separation on the pretext of abandonment.

Moreover, the allegations against homosexuals for being the reason of the spread of monkeypox, and the call for its prevention or prohibition, do not affect the origin of the right to same-sex relationships as long as this right is based on acquired human rights, which have been approved by the positivist philosophy. This is in contrast to claims that had appeared in societies or countries that follow the philosophy of natural or religious law, which will affect the prevalence of gay rights and threaten their existence.