

Deceased Organ Donation in the light of Islam

Rizwana Gul^I Dr. Farkhanda Zia^{II}

Abstract

And who ever saves one life as if he had saved mankind entirely.¹ Altruism is divine gesture of humanism and an important principle of Islam. The lives of twenty seven individuals can be saved on the off chance that one individual consents to give organs after death, however, there is little awareness with respect to deceased organ donation. This paper aims to provide an unbiased summary of the legal opinions on deceased organ donation and the reasons for the debate as to whether it is reasonable or otherwise.

Key words: Deceased, Organ, Donation, Death

Introduction

The standard of life of a person receiving the organ is improved to varying degrees. The donor is the person who gives the organ to the receiver via a surgery termed transplantation.² Organs which can be transplanted includes heart, kidneys, liver, lungs, pancreas, digestive system, skin, and thymus. Tissues typically involve muscles, ligaments, corneas, heart valves, and veins.³ The kidneys are the most widely transplanted organs in the world, followed shortly by both the liver and the heart.⁴ Cornea, bones and muscles are the most widely transplanted tissues.⁵ It is significant for individuals to acknowledge that giving an organ or tissue impacts the life of an individual. The field of medication called regenerative medicine has made significant progress in the growth and development of organs and tissues from human cells.⁶

A Contemporary Issue

Transplantation of human organs, with its diverse process, phenomenal healthcare benefits and capacity to take organs from the deceased to save the living, is a new practice that could not have been expected or debated in conventional Islamic legal literary works.⁷ As a result, modern scholars have had to adapt the classical Islamic concept of the derivation of legal decisions from source texts to a contemporary context.⁸ This research article shall be categorized into two main areas. In the first section, we will focus at the perspectives of both the proponents on the admissibility of organ transplantation in Islam, focusing on the views of Classical Muslim jurists as well as the perspectives of contemporary Muslim scholars on the topic.

I Ph.D Scholar, International Islamic University Islamabad

II Professor, Vice President female campus International Islamic University Islamabad

While in the second part we will evaluate the critical reasoning behind their perspective, and differing opinions among Muslim scholars on the issue of organ transplantation.

In the time of Classical Muslim jurists, transplantation of organs as we know it today was totally absent. Nevertheless, the various fiqh schools addressed the use of human body in diagnosis and treatment procedures. As the rule extracted from the Classical jurists doesn't actually address the issue of organ transplantation permissibility. But it does elaborate on their views on the utilisation of human body parts, thereby giving today's scholars some benefit; in referring to the question of organ transplants.

The Hanafi School

According to this school, it is deplorable to use human or pig bones in medical procedures as it is forbidden to acquire any benefit from them⁹. Besides that, it is also not allowed to sell anything extracted from the human body, e.g.: hair, blood, nails, etc. The reasoning for this is that all parts extracted from the human body are part of the body and, as would be the case, burying them is obligatory. It is said that the separation of one limb by another would entail the payment of complete blood wit, as the noble status of man would allow the destruction of one part of the body to be equated with the destruction of the entire body. It is mentioned that severing a limb by another would require the payment of full blood wit, as man's honoured status would require that any destruction of one part of the body would be equated with the destruction of the whole body.

The Maliki School

According to the Maliki's all parts of the human body are sacred, this includes regenerating parts for example hair and nails. Hence any form of utilisation of these parts would be considered a violation to the sanctity of the human body. It is stated in one of their scholarly texts that it is unacceptable to use the human body in a demeaning way, just as it is unacceptable to eat human flesh even at the pinnacle of famine.¹⁰

The Shafi School

Shafi'i School had forbidden any man from severing his own part of the body to be offered to a hungry person to eat it; this is in line with the view of the Maliki's above. This is due to the fact that at the same time the individual is also endangering his own life by relieving the pain and suffering of others. This rule is in *pari materia* with the inadmissibility on animal killing as medicine for the benefit of one's own self.

The Hanbali School

As mentioned by this school, killing another man, be it Muslim, Kafir or Dhimmi, is not permitted for a person whose life is in danger due to extreme hunger. Or even to cut off some portion of the body of another man for eating purposes. This rule is based on the fair dignity of the life of all people.

The Shia School

In this school it is mentioned that it is forbidden to consume any part of a living man as this would put the life of the latter in extreme danger.¹¹

From the discussion above one can see, major similarities of the various schools of fiqh. On the issue of the use of the human body even in moments of sheer desperation. Both these rulings seem to revolve around the question of the sacredness and sanctity of the human life / body and the inference that the human body is a trust (amanah) put upon us by the creator, and that being so, it must be protected from any sort of harm except for the benefit of others. The views held by these classical schools about the use of the human body do not necessarily amount to a denunciation of organ transplantation, because it is important to take into account the fact that organ transplantation is considered to be virtually non-existent in their time today.

Islamic Ruling on Deceased Organ Donation

In Islam, donation of the organs is generally permitted.¹²This is a significant blessing to those in torment and disappointment with the organs. This very donation not only does relieve the patient but will spare his / her life as well. Islamic researchers made passable donations of organs from a deceased person to a living person if the expired person voluntarily agreed to them when he was still alive or if his closest relative consented to them.¹³

Dr Yusaf Al- Qardhawi fatwa

“Someone who wishes to alleviate another human’s suffering, such as kidney disease, by donating one of his healthy kidneys, is allowed to do so in Islamic law. In fact, it is considered to be a good act and the donor will be duly rewarded. This is based on a Prophetic tradition in which the Prophet peace be upon him. Is reported to have said that those who show kindness on earth will receive God’s mercy and kindness. On this, I am of the opinion that there is no prohibition from donating an organ or body part to someone who needs it to cure him/her, and to replace his/her non-functioning organ, such as the kidney or heart etc. with the intent of giving charity. And this is considered to be a continual (jariah) donation, and the rewards for the donor continues to be accrued for as long as there are those who benefit from it.”¹⁴

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

Which means: “help one another in goodness and piety, and do not help one another in sin and aggression; and be careful of (your duty to) Allah; surely Allah is severe in requiting (evil).”¹⁵

Additionally, organ donation is a continuous (jariah) donation, i.e. rewards are earned for the donor even after his / her death as long as there are others who benefit from it, in any way. The Blessed Prophet (peace be upon him) said:

إذا مات ابن آدم انقطع عمله إلا من ثلاث وفيها وولد صالح يدعو له

Which means: “All deeds of mankind will cease upon death, with the exception of three deeds; continuous charitable act, knowledge which had benefitted others, and a pious offspring who offers prayers for his/her parent.”¹⁶

Most significantly, it will give patients a chance and new lease of life to live and relieve their pain and suffering.

In short, organ transplantation from the deceased is legal as long as the transplant is originally intended to save the recipient's life, and the deceased has given his consent. Therefore, Islam acknowledges giving a Muslim an opportunity to donate or otherwise and keeping the choice known during his / her life. It is necessary to inform next-of-kin and family members of whatever decision a Muslim has made, so that the decision will be upheld after his / her death.

Dr Muhammad Syed Tantawi, Mufti of Egypt fatwa

“Live organ donations are permissible by consensus of jurists, whether the recipient be his relative or a stranger, as long as such a donation is considered to be of benefit by a trusted doctor. Taking organs from the body of a dead person to transplant to someone who needs it, whether to save his life or to cure him, is permissible, and this ruling is also based on consensus of jurists.”¹⁷

Contemporary Islamic bodies Fatwas

Islamic Fiqh Academy¹⁸

“Organ from the deceased can be transplanted to a patient where the recipient's life relies on the transplant, or where the recipient's continued normal body functions are reliant on the transplant. However, this rests on the consent of the deceased or his family after his death, or on the decision of the Muslim community leaders if the deceased is unidentified or has no relative.”¹⁹

Senior Ulama Council of Saudi Arabia

Saudi Arabia's Senior Ulama Council has already approved cornea transplantation as early as 1967. In 1982, Saudi Arabia's Senior Ulama Council approved the transplantation of whole or parts of organs from deceased donors into living persons, provided there was no substitute. This council also unanimously permits transplantation of living organs.²⁰

Highest Council of Scholars, Riyadh

“It is permissible to transfer whole or part of organs from a deceased to another person, if the need for such a transplant is critical. Live organ donation is also allowed if the recipient is in urgent need of the organ”²¹

Islamic Fiqh Academy of OIC

The deceased's organs may be transplanted to a patient where the recipient's survival is dependent on a transplant, or where the recipient's essential body functions depend on the transplant. However this is based on the consent of the deceased, or his neighbour following his death or on the judgment of the Muslim members, if the deceased is anonymous or if he does not have any other relatives.²²

The National Fatwa Council of Malaysia

In case of serious need and demand, in which a recipient's life depends upon that organ, ample evidence is given to show that the transplanting procedure will succeed and is advisable. The death of the donor must be determined before the transplant can be performed in the case of cardiovascular transplant. Reasonable steps must be taken to guarantee that there is no killing or trade involve for organ.

Fatwa of Kuwait

The Fatwa Council of Kuwaiti consented in 1979 that the deceased's transplantation of organs with or without the permission of the deceased would be permissible. This fatwa comes from the necessity to save life.²³ The transplantation rule is also allowed for living donors. It is, however, forbidden if transplanted organs are organs that can lead to death, for example heart and lungs, if it is transplanted.

Fatwa of Majma' Al- Fiqh al- Islami

At its fourth conference in Jeddah, Saudi Arabia, on 11 February 1988, Majma al-Fiqh al-Islami issued a fatwa allowing organs from the deceased to be transplanted to the living person if the life of the recipient of the organ depends on the organ to be received, provided that the consent is obtained from the donor before death, or from the guardian of the deceased after death, or from the head of the Muslim community.²⁴ This fatwa also emphasizes the prohibition of the trafficking and smuggling of organs.²⁵

Fatwa of Majma' Al-Fiqhi Al-Islami Al-Hind

Majma 'al-Fiqhi al-Islami al-Hind (Islamic Fiqh Academy, India) was founded to help Muslims in India tackle Islamic law issues. In March 1989, a fatwa was decreed during a conference in New Delhi that permits the substitution of a patient's organ with another person's organ on the basis of an emergency. Organs may be donated from living donors or from deceased donors.²⁶

The View of Permissibility

Muslim Scholars today, generally are in favour of organ transplantation. They view such medical procedures as permissible just like many other medical procedures which aim to cure life threatening diseases. Their status is focused primarily on the Syari'ah (Maqasid Syari'ah)²⁷ objectives promoting human health and desires and protecting human life. Allah says to that effect:

“Unless it be for murder or for spreading mischief in the land – it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people.”²⁸

According to almost all leading Arab scholars and contemporary Indian / Pak scientists, the transplantation and donation of human organs is permitted on the following grounds according to this view.

The well-known (qawa'id) principles of Islamic Jurisprudence based on the Qur'an and Sunna teachings allow the use of unlawful things in cases of severe need and emergency. Where necessary, such restrictions are lifted, as when a person's life is threatened, the ban on eating pork or drinking wine is suspended. Allah says:

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالْدَّمَ وَحُمُ الْخِنْزِيرِ وَمَا أُهْلَ بِهِ لِغَيْرِ اللَّهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ عَفُورٌ
رَّحِيمٌ

“He (Allah) has only forbidden you dead meat, and blood, and the flesh of swine, and that on which any other name has been invoked besides that of Allah. But if one is forced by necessity, without wilful disobedience, nor transgressing due limits, then he is guiltless. For Allah is Most Forgiving and Most Merciful.”²⁹

The Qur'an also makes the expression of disbelief (kufr) to save your life.

Allah says:

مَنْ كَفَرَ بِاللَّهِ مِنْ بَعْدِ إِيمَانِهِ إِلَّا مَنْ أُكْرِهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالإِيمَانِ وَلَكِنْ مَنْ شَرَحَ بِالْكُفْرِ صَدْرًا فَعَلَيْهِمْ غَضَبٌ مِنَ اللَّهِ وَكَلِمٌ
عَدَابٌ عَظِيمٌ

“Anyone who, after accepting faith in Allah, utters unbelief, except under compulsion whilst his heart remaining firm in faith...”³⁰

The principle of Fiqh, based on the above Quranic guidelines, states:

“Necessity makes prohibition lawful.”³¹

According to Imam Shafi'i:

“It is permissible for a person dying out of hunger to consume the meat of another human.”³²

While impure, sinful, unlawful and unhealthy items are legal in cases of need and necessity. If a person's life is in danger, and he is in desperate need of transplantation, he is in such a scenario, and according to Muslim scholars the transplantation of organs should be permitted.

Organ transplantation is in the same category of life-saving as shown in the above verse. It should be remembered, however, that it is unethical to carry

out such a procedure if it would harm or endanger the life of the donor. Moreover, this must be quantified that Islam also takes into account the interests or welfare of man as a whole.

However it must be taken into account that Islam takes also in consideration the interest or welfare of man as a whole. Thus, the existence of the following legal rules or maxims.

- a) "Necessity makes the unlawful permissible"³³
- b) "When two interest conflict, let the one which will bring greater benefit take precedent"
- c) "Choose the lesser of the two evils"³⁴

The rule referred to above is based on the principles of establishing the general interest of the people while, at the same time, balancing its negative impact. Thus, if the negative effects are far greater than the good it draws, than it would be forbidden in Islam. Usually, there are two types of organ transplantation i.e. from living donors or deceased donors.

In case of deceased donors, Muslim scholars agree that it is permissible because it is not regarded a violation of the corpse, since Muslims are obligated to pay the same respect to the human body, whether living or dead. In Islam, donation of the organs is generally permitted. It is a significant blessing to those in pain and suffering.

Islamic researchers made passable organ donation from a deceased person to a living person if the expired person embraced it while still alive, or if the closest family approved.

The View of Impermissibility

The view of impermissibility fits the following opinions:

a) Sanctity of the Human Life and Body

Man is vested with the duty of protecting and preserving one's own life and body. This is clear from the prohibition in Quran prohibiting man from taking his own life or the life of others;

وَلَا تَقْرُبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ وَلَا تَتَّبِعُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ذَلِكَمْ وَصَاكُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ³⁵

"And do not kill the soul which Allah has forbidden [to be killed] except by [legal] right. This has He instructed you that you may use reason."

The hadith also makes clear the role of Islam on the sanctity of life, as reported from the Prophet's final sermon (*Khutba al Wada'*) where he said:

"Your life and your property and your honour are sacred until you meet your lord"³⁶

The authorities cited above clearly indicate that not only the life of every Muslim is considered sacred but the body as well is considered as sacred as the soul. This is further supported by the prophet Muhammad (S.A.W) hadith which says;

“Breaking the bone of a dead person is equal (in sinfulness and aggression) to breaking it while a person is alive”³⁷

This hadith shows that the sacredness of the human body is not bound to life itself, in other words, the sacredness of the human body embodies life's boundaries, because the human body remains sacred and revered even though no soul is connected to it. Thus, how can one conduct organ transplantation by cutting a human body and extracting its organs, whether it be on the living or the deceased, when this would lead to a form of aggression towards the human body, thereby suggesting the body's mutilation?³⁸

b) The Human body as an ‘Amanah (Trust)

God endowed human beings with the duty to be Khalifah on earth, and so he has granted us a body so that we may exalt Him on earth. The human body is but God's trust to man, to be cared for and looked after to the best of our abilities. Would it not be logical that if one were to hold a priceless commodity for another, one should return in the same condition if not better when the owner requires its return? And man has been blessed with the best of things as Allah says in Al Quran said:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِّنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَىٰ كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا

“And We have certainly honoured the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference.”³⁹

c) Respect for the Dead

Islam places great importance in having respect for the dead or rather in this case corpse of the deceased. This is apparent on many rulings concerning the funeral and burial process for Muslims; which requires great care and meticulousness in handling the corpse so as not to injure or mutilate the deceased. The Prophet (P.B.U.H) had mentioned in the hadith mentioned before;

“Breaking the bone of a dead person is equal (in sinfulness and aggression) to breaking it while a person is alive”⁴⁰

Besides it is obligatory on every Muslim to bury human remains, be it a limb of a criminal or nails, hair, etc, to the reverence of the sacredness of the human body⁴¹

d) Prohibition of the utilisation of forbidden things as Medicines

In this regard the Prophet (PBUH) says;

“Allah created the disease and also the cure for every disease He has provided a cure. So treat yourselves with medicine, but do not treat yourself with prohibited things”⁴²

This Hadith clearly indicates that one cannot use prohibited things as Medicine, As the Hanafi School has indicated earlier, the use of human and pig

bones in medical care is deplorable. It is mentioned in Sunan- Abu- Daud that Prophet (peace and blessings be upon him) was being asked about frogs that were used for medicinal purposes. He forbade killing of frogs, and said:

“Their croaking is tasbih (glorification of Allah).”⁴³

So even the frog's life is considered sacred, wouldn't man's life be as important and noble as the life of a humble frog?

Critical Analysis of Fatwas

This presents somewhat a challenge to the Muslim Community as it raises doubt on an already sensitive issue. Basically, there are two major views concerning deceased organ transplants; the first view permits deceased organ transplants on the grounds of the benefits such surgical operation brings outweighs the negative implications it poses. The second view on the other prohibits deceased organ transplantation since this threatens the sanctity and sacredness of the human body be it in death or in life. Both having legitimate reasons for their scholarly stance and both representing an Islamic perspective on organ transplantation. The first of the two major groups is gaining more support. Most fatwa councils from all over the Islamic world are supporting the idea of deceased organ transplantation, however this fatwa's does not bind the Muslim's as it is not as yet exhaustive. It is a personal choice which every Muslim has to make on his own. Even the Prophet himself said;

“Even if the whole people has given you fatwa juridical decisions or rulings you ask for fatwa to your consciousness (nafs) and to your “heart” (qalb).”⁴⁴

This hadith certifies that man is accountable for his actions whatever scholars claim through their ijma or ijtihad that the person Muslim is still accountable for his actions. This is extremely important with respect to organ transplants, since the decision to donate ones organs is a private and self-determined decision since it is believed in Islam that:

“God has created the human organs and harnessed them for man's benefit”

Therefore, holds him accountable for his organs and will eventually call him to account. The question of organ transplants is not an issue that can be conclusively answered with one uniform voice representing all the Muslims, but rather the individual Muslim must make that fateful journey in deciding his or her own stance concerning organ transplantation, because when it really comes down to it; Organ donation cannot be forced on a person, he must elect himself what happens to his body while at the same time being answerable to his creator.

Conclusion

We must concede to the fact that, both sides of the fence in the field of deceased organ transplants does give equally strong arguments. Hence, it is difficult, not to mention unjust to condemn one side while backing another. The opponents and proponents of deceased organ transplants has substantiated

their rulings by deducing it from the sources of Islamic law, that being the Quran and the Sunnah. Both have equal footing concerning the permissibility and prohibition of deceased organ transplants. The task of all Muslims now is erroneously simple, which is to choose the stance that they feel is closest to piety.

In the course of doing research on this topic, we realise that the reason deceased organ transplantation is such a difficult issue to tackle is because it touches on realms that we know nothing about and will never gain knowledge on that being the question of the soul, life after death, etc. In simpler words knowledge of the unseen (‘ilm Ghayb) God says to that effect;

وَعِنْدَهُ مَفَاتِيحُ الْغَيْبِ لَا يَعْلَمُهَا إِلَّا هُوَ وَيَعْلَمُ مَا فِي الْبُرِّ وَالْبَحْرِ⁴⁵

“And with Him are the keys of the Ghaib (all that is hidden), none knows them but He”

We urge that do not be hastened or coerced into being ‘pro-organ transplant’ and do not also be blinded so as to reject it wholly. Be critical and yet open-minded on the idea of deceased organ transplantation; most importantly ask yourself and ask your heart and you will find your answer. But a gentle reminder from us; one must be certain of the choices one makes, for if ever there is genuine doubt concerning your decision even after referring to all the relevant sources, leave it, as the Prophet himself said;

“Both legal and illegal things are obvious, and in between them are (suspicious) doubtful matters. So whoever forsakes those doubtful things let he may commit a sin, will definitely avoid what is clearly illegal; and whoever indulges in these (suspicious) doubtful things bravely, is likely to commit what is clearly illegal. Sins are Allah’s hima (i.e. private pasture) and whoever pastures near it, is likely to trespass it at any moment”⁴⁶

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