

ISLAMIC LEGAL AND ETHICAL VIEWS ON ORGAN TRANSPLANTATION AND DONATION

by Ghulam-Haider Aasi

Abstract. In Islam, one of the core beliefs is in the life of the hereafter. At the end of time and all that exists, all human beings will be resurrected (in their bodies and souls) and will face the Day of Judgment. Even their body parts or organs will stand witness against them. Furthermore, in Islamic law, every action or thing is categorized either as legitimate or prohibited. This article explores ethico-legal opinions on the issues of organ donation and transplantation in the light of these essential Islamic beliefs.

Keywords: *al-Akhirah* (life of the hereafter); *Amanah* (human body as trust); human accountability; *huquq-Allah* (rights of God); *huquq al-Ibad* (rights of fellow creation); *Khilafah* (human being as a trustee of God on Earth); sacredness of human life; *Shari'ah* (Islamic law).

Transplantation and donation of human organs poses many ethical and moral questions for the twenty-first century global community. This paper explores the Islamic perspective on organ transplantation and donation. In order to properly analyze this complex issue, it is necessary to establish a basic understanding of Islam and of *Shari'ah*, Islamic law. The contemporary Islamic views of organ transplantation and donation, which are primarily derived from the *Shari'ah*, will then be discussed.

Essential concepts of Islam begin with four tenets. The main tenets of Islamic belief are: *Tawhid*, *Risalah*, *Khilafah*, and *Al-Akhirah*. The first and foremost concept in Islam is that of *Tawhid*, which signifies the oneness, universality, and transcendence of God, or Allah (an Arabic word meaning the one and only true God). God alone is the Creator and Sustainer, and

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is Self-sufficient; all else is a creature of God. Islamic belief holds that all existence is dependent on God, the Exalted and Almighty. All creatures depend upon God. Whereas all creatures are interdependent, God is not dependent on anything in creation. *Islam*, which means submission to God, emphasizes that God alone is worthy of absolute loyalty and worship (*Ma'bud*). All creatures are servants of God (*'Abd*) and as such should obey, worship, and serve God. The word *Muslim* is used to describe a follower of Islam, though its literal meaning is one who submits his or her will to God. Muslims believe that the purpose of human life is to serve God and humankind; service to God and service to humanity are inseparable in Islam.

The way in which God relates to his creation, in particular human beings, leads us to the concept of *Risalah*, which stands for God's guidance to humankind through his angels, his books, and his messengers and prophets. Muslims believe that from the time of Adam, the first human creation, God has continuously sent certain human beings to be messengers and prophets. The prophets acted as models and provided guidance to humankind as to how to live the will of God.

The terms *Khilafah* and *Amanah* refer to human beings as the trustees of God or stewards of God on Earth. In Islamic belief, life is both a trust and a test to serve God or to do the will of God. Humankind's purpose is to love God and to love fellow creation. Human beings are accountable to God. At the same time humans are responsible for the well-being of the creation and its proper existence, serving as stewards for the rest of the creation. Furthermore, each person is accountable for the proper maintenance of his whole life and physical body, which are considered trusts of God (*Amanah*). Humankind is called upon to enjoin good, forbid evil, establish justice, and remain conscious of God.

The final concept central to Islam is *Al-Akhirah*, the life of the hereafter. Islam considers the earthly life to be transitory yet very crucial in its consequences for the life of the hereafter. All humans will pass away and then will be resurrected. In Islam, human beings are both body and soul, and these two aspects are inseparable. After the resurrection, there will be a Day of Judgment when God's final judgment will be rendered on each person. All human beings will be resurrected in their physical bodies as they have lived in this life, and be held accountable for their actions. From the Islamic perspective, this has a crucial significance. Islam's holy book, the Quran, which Muslims believe is the verbatim revelation from God of his final will, states that even a person's organs and skin will speak against him/her on the Day of Judgment, acting as witnesses to any wrongdoing (Q41.20–22). As the life of the hereafter is eternal, success is eternal bliss in the presence of God, and failure is eternal Hell. God alone makes the final judgment.

Thus, the main tenets of Islam may be summarized as follows. Muslims believe in the oneness of God, or Allah. God is completely powerful and almighty with everything occurring according to his plan and his will.

Muslims believe in the angels, the messengers, and the prophets, who act as links between humankind and God through the revelation from God. Muslims believe in the life of the hereafter and the Day of Judgment, when they will be resurrected, body and soul, and judged by God according to their actions on Earth. Ultimately, however, God's judgment is inseparable from God's absolute mercy.

In conjunction with these basic concepts of Islam, core Islamic beliefs may be understood through five main practices of Islam, known as the Five Pillars of Islam. The Five Pillars, which form the foundation of religious life and unite all Muslims throughout history, are: (1) *Shahadah*—declaration of faith that there is no God but God, and Muhammad (peace be upon him) is the Messenger of God; (2) *Salat*—worship—prayer five times each day; (3) *Zakat*—charity, or welfare contribution for the needy, and the sharing of wealth with fellow human beings; (4) *Sawm*—fasting between dawn and sunset during the month of Ramadan; and (5) *Hajj*—making the pilgrimage to Mecca, once in a lifetime, when one is physically and financially able to do so.

Shari'ah is an Arabic term that literally translates as an established way to the water source; hence, the way to the source of life. As a religious term, *Shari'ah* refers to the Right Way as shown by God through two sources, the Quran and the Sunnah (the sayings, actions and approvals of the prophet Muhammad). According to Islam, human beings have a duty to God, to fellow creation, and to themselves to live according to the guidance of God. Based upon guidance from the Quran and the Sunnah, human beings are able to develop a system for living that encompasses all aspects of human life. The objective of the *Shari'ah* is to organize all human life and society both in its individual and collective form to serve God and to have a relationship with all creation according to God's guidance.

The *Shari'ah* is not limited to a system of religious laws but governs every conceivable aspect of one's life including health issues (even to the extent of the proper methods for eating and sleeping) and social etiquette. Therefore, law and ethics are almost inseparable in Islam. The *Shari'ah* is viewed as the high path or the straight path, that is, the means through which to obtain the pleasure and the will of God. The Muslim yearning throughout history has been how to establish *Shari'ah* according to societal and/or cultural changes, so that nothing is done that would affront the will, the pleasure, and the love of God.

Understanding of the *Shari'ah* is crucial to properly understanding Islam and Islamic views and practices. In the West, there is much misunderstanding and misinformation regarding *Shari'ah* and its historical role. The cause of this misunderstanding is internal as well as external. Internally, Muslims, from the thirteenth century through the present, have not developed the *Shari'ah* to respond to societal, cultural, and economic changes, in terms of both Islamic law and theology. The external issue is the common misunderstanding in the West that when citizens of Muslim countries

demand Shari'ah as their system of law, they wish to return to the laws and practices of the seventh and eighth centuries. Though the main sources of Shari'ah, the Quran and the Sunnah, were established in the seventh century, which is the historical inception of Islam, the scholars of Shari'ah have traditionally interpreted these sources in response to changing times and situations in history.

In practical terms, Shari'ah historically has acted as a unifying system for people of many different regions and cultures. Within one hundred years after the prophet Muhammad's death (the period from 632–732 C.E.), Islam had spread from what is presently the Gulf States and Saudi Arabia to the borders of China in the east, west through all of Spain, north to Central Asia and present-day Chechnya, and south to the Saharan desert. During Islam's Golden Age, the vast Muslim empire encompassed numerous and varied cultures and regions, yet Islam provided the basic source of common law that unified the entire Pax Islamica.

As previously stated, the primary or material sources of Shari'ah are: (1) the Quran, the verbatim word of God revealed through the angel Gabriel to the prophet Muhammad, and (2) the Sunnah, the words, sayings, and approvals of the prophet Muhammad. Because Islam spread to various other non-Muslim or non-Arab lands, questions and challenges arose regarding the application of Shari'ah. These challenges required the interpretation and implementation of Shari'ah according to the changing times and situations.

In addition to the revealed and primary sources, Shari'ah draws from other sources. The secondary sources of Shari'ah are *Ijma*, the consensus of jurists ratified by the acceptance of the *Ummah*, or Muslim community; *Qiyas/Ijtihad*, the analogical reasoning or exhaustive effort of scholars to find the divine intent in new cases or situations in light of norms of the first two sources; *Urf/Adah*, the customary conventions of the peoples so long as these do not contradict revealed teachings; and *Maslahah*, laws for the common good and total welfare of the human society. Wherever there was a society whose practices were in accordance with the Quran and Sunnah, Islam approved those practices of the society. In cases where the practices of the society went against the revealed sources, those practices were modified in light of the Quran and Sunnah.

According to Islam, the primary goal of the Shari'ah, or God's guidance, is not to burden humanity but to make life easier for human beings. The early Muslim scholars always focused on this goal. Their quest to achieve this objective generated enlightened discussion and led to the development of several Muslim schools of law. The fact that the scholars came from different backgrounds and circumstances accounts for the variation in the interpretation of the Shari'ah.

Classical schools of Shari'ah are the *Hanafi*, the *Maliki*, the *Shafii*, the *Hanbali*, the *Ithna Ashariyya*, *Imami* or *Jafari*, the *Zaydiyah*, and the

Ismailiyya. The Hanafi School, named after Imam Abu Haifa (d. 767), is the most rational and liberal as well as the largest of all the schools. The emphasis of this school is on rationality and adaptation to the host culture. The Hanafi School of law has historically been prevalent in Turkey, Central Asia, Europe, the Middle East, Afghanistan, India, and Pakistan. The Maliki School of law is named after Iman Malik (d. 795) of Madinah and is practiced in North and West Africa and was the practice of Muslim Spain. The Shafii School is far more conservative than the previous two schools and is heavily based upon the second source of Shari'ah, the Sunnah. The Shafii School is named after Imam Shafii (d. 820) and encompasses the region from East Africa and nearby coastal trade areas to Southeast Asia, primarily Egypt, Sudan, Malaysia, and Indonesia. The Hanbali School, named after Ibn Hanbal (d. 855), is the most literalistic and conservative of all the schools and is practiced today only in Saudi Arabia. The Ithna Ashariyyah, Imami, or Jafari is practiced in Iran, Iraq, India, and Pakistan. The Zaydiyah School hails from Yemen, and the Ismailiyyah School is a Shia interpretation practiced in East Africa and India by the Ismaili Shia communities.

The Shari'ah defines the conduct of human life in terms of two broad categories. The first category is *Huquq-Allah*, the rights of God upon human beings. These rights of God require that human beings worship only God and conduct their lives for the love of, and in sincerity for, God. The second category is *Huquq al-Ibad*, the rights of fellow creation. In Islam, one's duties to God and to fellow creatures take precedence over one's rights. Islamic teachings emphasize that one should be more conscious of one's duty to fellow creation than of one's own rights.

The Shari'ah furthermore translates these two categories to encompass three aspects of a Muslim's life. First is the aspect of Ibadah, or the rights of God, which emphasize that all human beings must worship God alone. The second aspect is that all human beings are trustees of God and are required to do everything according to God's will as embodied in his revelation, the Quran. Third is the aspect of one's duties toward fellow human beings, which emphasize service to fellow humanity and stewardship to the rest of creation.

Historically, Islamic scholars, reflecting on the objectives of the Shari'ah, categorized it generally into five rules or sections into which all human actions and thoughts, both moral and legal, are contained, commonly referred to as *Al-Ahkam—Al-Khamsah*, or the five rulings. These are: (1) *Fard*, that which is obligatory; (2) *Mustahabb*, that which is highly recommended; (3) *Mubah*, that which is neutral; (4) *Makruh*, that which is blame-worthy; and (5) *Haram*, that which is prohibited.

The main objective of the Shari'ah, however, has always been to guarantee specific universal rights. These universal rights are religious freedom, sanctity of human life, sanctity of human dignity and honor, freedom of

conscience and thought, sanctity of family and progeny, and sanctity and freedom of property.

The first priority in the hierarchy of Islamic universal rights is religious freedom. Traditionally, Islam recognized the identity of individuals according to their religious belief and commitment. Hence, a person in the traditional Muslim society would not be identified on the basis of his or her race or nationality. Rather, it would be a person's religious adherence that would provide his or her proper role in society. Second in importance to religious freedom is the sanctity of human life. Islam clearly emphasizes that no human life can ever be taken except by God. The third universal right is the sanctity of human dignity and honor. The aspects of human dignity and honor are the focal points in the debate among Muslim jurists regarding the issue of organ transplantation and donation. Similarly, the sanctity of family and progeny as well as the sanctity of freedom and property are inalienable human rights.

The Quran and the Sunnah do not specifically address the issues of organ transplantation and donation, thus leaving room for debate by contemporary Muslim jurists on these issues. Certain jurists condemn these practices while others approve of them. Both those in favor of organ transplantation and donation and those opposed to these practices cite almost the same verses of the Quran and the Sunnah to support their positions.¹

In examining the arguments of those jurists who are against organ transplantation and donation, it is important to note that modern medical facilities and treatment methods are not widely available in many Muslim nations. Traditional methods of treating illness such as homeopathy and herbal medicine are commonly practiced. Additionally, some Muslim scholars are critical of contemporary Western medical care because the element of prayer and appealing to God is basically nonexistent in any method of modern medical treatment. These scholars believe modern medical science has become more concerned with the business element rather than the human element. The Quran and the Prophetic traditions are cited by the more traditional as well as literalist scholars to illustrate principles for the prohibition of organ transplantation and donation.

These scholars emphasize several Islamic beliefs to support their position. The first belief is that both human life and the human body are trusts from God. If the human body is a trust, it should not be altered in any way, including removing and/or replacing one's organs. Regarding organ donation specifically, the human body is a trust and a gift from God, not the property of human beings themselves. Therefore, the scholars state, one cannot donate that which one does not own. The second point made in the argument against organ transplantation and donation is the dignity and sacredness of human life. The human body and human life are considered sacred in Islam. Therefore, the scholars argue, how can human body parts be taken from one person and given to another? These scholars

state that removing the parts of even a dead or dying person violates the dignity of human life and the human body. Thus, it is paramount for human beings to maintain the human body as it is bestowed by God, and it should not be violated or changed. The concepts of the human body as a trust and the dignity and sacredness of human life and body are highlighted in the Quran as follows:

And spend of your substance in the cause of Allah, and make not your own hands contribute to [your] destruction; but do good; for Allah loveth those who do good. (Q 2.195)

On that account: We ordained for the Children of Israel that if anyone slew a person—unless it be for murder or for spreading mischief in the land—it would be as if he slew the whole people: and if anyone saved a life, it would be as if he saved the life of the whole people. (Q 5.32)

The dignity and sacredness of human beings is emphasized in numerous verses in the Quran, for example:

Verily we have honored the children of Adam. We carry them on the land and the sea, and have made provision of good things for them, and have preferred them above many of those who We created with a marked preferment. (Q 17.70)

In addition to the principles of the human body as a trust from God, and the dignity and sacredness of humans, a third principle cited by those opposing organ transplantation and donation is that human life cannot be used as a means to an end. The Shari'ah is very clear that a person can never consume the flesh of another person, even if he is close to death from starvation. Additionally, buying and selling human parts for monetary gain is forbidden in Islam. The concern is that the trafficking in human body parts could lead to the exploitation of the poorest and weakest members of society. Accounts have recently been documented of an underground trade in human kidneys in India. A system has evolved whereby impoverished villagers sell one of their kidneys to help finance family weddings and/or to reduce their debts. Government officials, physicians, and the wealthy foreigners who purchase these organs all contribute to this system of exploitation.

A fourth point used to strengthen the argument against organ transplantation and donation is the belief in Islam that there can be no alteration of God's creation. The scholars use the following verses from the Quran to support their view that cutting human bodies and removing body parts is altering God's creation, which is not allowed.

So set thou thy face steadily and truly to the faith: (establish) God's handiwork according to the pattern on which He has made mankind. No change (let there be) in the work (wrought) by God: that is the standard Religion, but most among mankind understand not. (Q 30.30)

The following verse from the Quran concerns Satan's work to change God's creation, and further underscores this point.

And surely I will lead them astray, and surely I will arouse desires in them, and surely I will command them and they will cut the cattle's ears, and surely I will command them and they will change Allah's creation. Whoso chooseth Satan for a patron instead of Allah is verily a loser and his loss is manifest. (Q 4.119)

Finally, there are prophetic traditions that scholars point to in support of their opposition to organ transplantation and donation. The prophet Muhammad provided specific guidance on the issue of the sanctity of the human body. He stated that breaking the bone of a dead person is equal in sinfulness and aggression to breaking it while a person is alive. Mutilation of the human body is considered a sin in Islam. The scholars oppose the removal of human organs in view of the fact that aggression toward the human body and mutilation are considered sinful acts. Another prophetic statement cited to support the prohibition of organ transplantation and donation is taken from the prophet's final sermon, in which he informed the Muslim community that God has made the life, property, and honor of Muslims sacred until the Day of Judgment. Some scholars interpret this statement to mean that God-given gifts, such as human life and the physical body, cannot be exchanged or altered in any way.

The prophet Muhammad advised his followers of the proper method of living, emphasizing practices that were clearly recommended and practices that were clearly prohibited. However, there remain many doubtful areas between these two ends of the spectrum. Therefore, some Muslim scholars have advised that one should avoid that which is doubtful. The scholars who view organ transplantation and donation as immoral have applied the general standard of avoiding the doubtful to their position. They point out that anything doubtful should be avoided so that one does not engage in an act which may be prohibited. As the issues of organ transplantation and donation are not clearly addressed in the Quran and the Sunnah, they should be avoided, these scholars assert.

Muslim scholars who are not in favor of organ transplantation and donation are in the minority among contemporary Muslim jurists and scholars. There are significantly more Muslim scholars who use these same sources, the Quran and the Sunnah, to build a case in favor of organ transplantation and donation. These scholars do not limit themselves to the literalist and rigid interpretation of the above-cited revealed sources. Indeed, the vast majority of Muslim jurists and scholars support organ transplantation and donation.

The scholars who have a favorable view of organ transplantation and donation derive their arguments from the revealed sources as well, but in their understanding of these texts, they focus rather on the spirit of the law than on its literal basis. Hence they interpret them in conjunction with the changing times and changing technology. They affirm the Islamic belief that God's laws are for the betterment of human society. Therefore, they adopt the position that organ transplantation and donation should be condoned as it benefits rather than hinders the well-being of human life.

These scholars utilize three main principles to build their case in support of organ transplantation and donation: (1) concern for public welfare (*al-Maslahah*), (2) a sense of altruism (*Ithar*), and (3) a belief that human life is a sacred trust.

Regarding concern for the public welfare, the scholars assert one of the most important rules of the Shari'ah: Necessity makes unlawful things permissible. For instance, if a life will be lost or adversely affected without an organ transplant, the transplant should be allowed. Similar exceptions may be made regarding other Islamic prohibitions. If one is starving, to the point where his/her life is in danger, and only pork is available, the pork may be eaten. The following verse from the Quran illustrates this point.

He hath only forbidden you dead meat, and blood, and the flesh of swine, and that on which any other name hath been involved besides that of Allah. But if one is forced by necessity, without willful disobedience, nor transgressing due limits—then he is guiltless. For Allah is Oft-Forgiving, Most Merciful. (Q.2.173)

However, as previously stated, all the schools of law maintain that no matter what condition, including imminent death, no human may eat the flesh of another human. Additional aspects of concern for the public welfare are (a) that greater and general public interest takes precedence over the lesser, (b) the choice of lesser evil is required in case of necessity or extinction, and (c) the rights of the living take precedence over those of the dead. For instance, if a pregnant woman is dead, but there is a chance her unborn child may still be living, it is permissible to cut open her body to remove the child. Likewise, if a person who is dying agrees to provide his organ(s) to one in need, he will be rewarded as he has benefited another human being. His dignity and honor are maintained as he is dying anyway, but he is sharing his body parts and extending the life of another person.

In an altruistic framework, the scholars who are in favor of organ transplantation and donation point out that whatever is done for the good or betterment of human life is permissible. The Quran refers to this issue as the following illustrates.

O ye who believe! Violate not the sanctity of the symbols of Allah, nor of the sacred month, nor of the animals brought for sacrifice, nor the garlands that mark out such animals, nor the people resorting to the sacred house, seeking of the bounty and good pleasure of their Lord. But when ye are clear of the sacred precincts and of pilgrim garb, ye may hunt and let not the hatred of some people in (once) shutting you out of the sacred mosque lead you to transgression (and hostility on your part). Help ye one another in righteousness and piety, but help ye not one another in sin and rancour: fear Allah: for Allah is strict in punishment. (Q.5.2)

As saving the life of another is doing good, the scholars underscore cooperation in goodness. This would then include organ transplantation and donation, because they are practices that save lives.

The prophetic tradition stresses that all the believers are like one body: if one part of the body aches, the whole body aches. The scholars have

derived from this tradition the principle that if one individual of the *Ummah*, or Muslim community, is dying, the organ of another person may be used to save him as they are like one body.

The final principle cited by scholars in support of organ transplantation and donation is that human life is a sacred trust. As a trust of God, human life and body should be protected and cared for.

O ye who believe! Eat not up your property among yourselves in vanities; but let there be amongst you traffic and trade by mutual good will: Nor kill (or destroy) yourselves: for verily Allah hath been to you most merciful! (Q 4.29)

The Muslim jurists who favor organ transplantation and donation strongly caution that these acts are acceptable only under specific circumstances and following strict guidelines—primarily, that no one can sell his organs under any circumstances, and the organs donated by a dying person must be clear of any disease or problem that may adversely affect the recipient. Islamic scholars clearly specify certain conditions for which organ transplantation and donation are allowed as well as certain requirements that must be met.

The conditions under which organ transplantation and donation are allowed are: “1) the transplantation is the only form (means) of treatment; 2) the expected degree of success of this procedure is relatively high; 3) the consent of the owner of the organ or of his heirs has been obtained; 4) death must have been fully established by Muslim doctors of upright character before such a venture has been taken; and 5) the recipient has been informed of the operation and its implication” (Ebrahim n.d. 56). The requirements for live organ transplantation and donation are the following: “1) the consent of the donor must be obtained; 2) the transplant is the only form of treatment possible; 3) there is no imminent danger to the life of the donor; 4) the respective transplantation has been proven successful in the past; and 5) no vital organ can be donated, as this would be taking the life of one to save another, and is totally prohibited” (Ebrahim n.d. 57).

The majority of Islamic scholars favor organ transplantation and donation on the basis of the benefit for the public good, sacredness of human life, and the human body as a trust from God which should be protected.

NOTES

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1. This presentation/ lecture in terms of its main substance on views of modern jurists on organ transplantation and donation is based on Ebrahim n.d.

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