

Shi'a Opinions Regarding Organ Donation and Transplantation

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Part One

Shi'a Islam – General Background

- 10-13% of Muslims are (Twelver) Shi'a.
- Shi'a are the majority Muslims in Iran, Iraq, Bahrain and Azerbaijan.
- There are also large communities in Afghanistan, India, Kuwait, Lebanon, Pakistan, Qatar, Syria, Turkey, Saudi Arabia and UA.
- One third of the world's Shi'a live in Iran.



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Shi'a Islamic Law

- A primary difference between Sunni and Shi'a sources of Islamic law, is the Shi'a reliance on the words and actions of the **12 Imams** (who are the direct descendents of the Prophet Muhammad(PBUH)).
- The *Imams* (leaders) are considered to embody and personify Quranic values in their teachings and personal conduct. They provide 250 years of living examples of the Prophetic teachings.

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- After the occultation of the last Imam (941 CE) Islamic Scholars were considered the indirect deputies of the imam.
- While Sunni scholars adopted **Ash'ari** theology (theistic subjectivism), Shi'a scholars leaned towards **Mu'tazili** (ethical objectivism) theology.
- Mu'tazilites consider divine commands to be in accordance to justice, and harms and benefits discernible by human reason.
- For Mu'tazilites **human reason** had the capacity to discover universal moral values and became an important source for interpreting Quranic text. (Revelation and reason deemed to be complementary).
- ➔ **Reason** plays a crucial role in Shia **ijtihad** (intellectual exertion) to interpret legal sources and derive new rulings pertinent to new contexts.

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- **The sources of Shi'a law are:**

The Quran, the traditions of the prophet and the 12 Imams (*sunnah*), consensus (*ijma*) and reason (*aql*).

- When a ruling is not directly and with certainty derived from the Quran and Sunnah, then **ijtihad** is necessary to find the most **probable** legal ruling for a given problem in a new situation.
- Since no scholar is infallible, the opinions of legal scholars (*mujtahids* – those who engage in ijtihad) are subject to revisions.
- The legal ruling of a scholar on a given problem is a **fatwa**.

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Marja-i taqlid

- Since it is the ethical duty of every Muslim to follow divine law to the best of their ability, it is determined in Shi'a law that all Shi'a must follow the rulings of the scholar (mujtahid) they deem to be the most knowledgeable.
- The most authoritative mujtahids with the greatest knowledge are called **Marja-i taqleed** (source of emulation).
- In the Shi'a world there is a plurality of such grand scholars (hereon 'Marjas').
- Shi'a who are not themselves a mujtahid may follow any one of the marjas.
- Mujtahids are customarily granted the title 'ayatullah' and Marjas are often called 'ayatullah al-uzma' (Grand Ayatullah), or simply 'ayatullah' for short.

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Names of notable marjas:

- Ayatullah Sistani (Leading Ayatullah in Najaf, Iraq)
- Ayatullah Khomeini (Iran, deceased 1989)
- Ayatullah Fadlallah (Lebanon, deceased 2010)
- Ayatullah Khamenei (current supreme leader of Iran)
- Ayatullah Makarem Shirazi (Iran)
- Ayatullah Fazel Lankarani (Iran)
- Ayatullah Mousavi-Ardabili (Iran)
- Ayatullah Nuri-Hamedani (Iran)
- Ayatullah Sane'i (Iran)

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Part Two

Shi'a Fatwas on Organ Donation

- Majority of Shi'a scholars permit organ transplantation and organ donation from both living and brain-dead persons.
- The majority also allow the exchange of payment in return for living donation.

General Landscape of Organ Donation in Iran

- General attitude of Iranian public is **positive** towards organ donation.
- Number of organ donors is on a steady rise.
- In a study of 706 adults in Tehran, 84.6% were willing to donate after death. (Broumand et al. 2012)
- 64.3% of those who *believed* their marja was against organ donation stated they were still willing to donate.



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Brain death donation

- 3-6 thousand cases of brain death a year
- Make up 20-30% of all kidney transplants (increasing)
- Coordinated through hospitals (not centralized)
- Very difficult to coordinate (ex. Shiraz vs. Tehran)
- Legalized by the state in 2000, implemented in 2002.

Living organ donation (paid donation)

- Over 65-75% (decreasing)
- Coordinated by the Kidney Patient Foundation in collaboration with public hospitals
- Easier to coordinate and implement.
- Formalized since 1997

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Paid Living Unrelated Kidney Donation

- Iran has implemented the only sustained, bureaucratically organized program for paid kidney giving in the world.
- Program was initiated by the NGO, the Kidney Patient Foundation (KPF) and has been active since 1997.
- KPF obtained fatwas to allow the transplantation and sale of kidneys.
- **Medical doctors** and **KPF patient advocates** were crucial players in informing and persuading scholars. (Letters sent, meetings arranged).
- KPF was also instrumental in the long-standing legal and ethical debates on brain-death donation, resulting in permissive fatwas.

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2 Examples of Fatwas on Organ Donation

Ayatullah Makarem Shirazi

"The severing of an organ from a living person and the transplantation of that to someone whose both kidneys have decayed (*fased*) is permissible, on the condition that the owner (*saheb*) of the organ **consents**, and **his life (*jan*) is not put into danger**; and caution requires that if money is received in exchange, that it be in exchange for the permission to proceed with the taking (*gereftan*) of the organ, and not the organ itself."

Ayatullah Nuri-Hamedani

"If **the life of a Muslim depends on the transplantation** of an organ from a deceased Muslim, and a non-Muslim replacement does not exist, then the severance and transplantation of the organ is permissible, and per caution the blood money (*diyeh*) should be paid so that it may be spent on the deceased; but selling (*foroosh*) is not permissible. But before death, there does not seem to be a prima facie (*fi nafseh*) reason for not permitting sales, unless the **danger of death or unbearable side effects** (*avarez-e-gheir-ghabel-tahamol*) exists – in which case it is not permissible."

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Opinions and Concerns of Most Shi'a Scholars

- **Transplantation: permissible**
 - Ritual purity of the organ
 - Desecration of the body
 - Undue harm to Muslim donor
- **Kidney selling: permissible**
 - Same concerns as for transplantation
 - Since altruistic donation is permissible, so is selling
- **Brain death: permissible**
 - Definition of death
 - Desecration of Muslim donor body ('Hurmat')
 - 'Maslaha': saving the life of a Muslim patient
 - Preference for procuring from a non-Muslim body (assuming that the non-muslim does not have similar restrictions/attitudes towards treating the deceased body)

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Legal Concerns: Nephrectomy

- Is man the **owner** of his body? Does he have such jurisdiction over his body that he may choose to cut a part out of it?
- Is man entrusted (*amanatdar*) with his body by God, or does he have "domination" (*saltanat*), or "ownership" (*malekiat*) of his body? (Each entails authority with varying degrees of freedom/limitation)
- The differences of opinion yield similar results – that man's authority over his body is limited to actions that:
 - 1) do not constitute a "violation of the dignity" (*hatk-e-hormat*) of the Muslim body, and
 - 2) that do not cause the body "harm" (*zarar*).
 - 3) In the case of brain-death, it must be made medically certain that the donor is dead.

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Legal Concerns: Implantation

- Can a severed kidney be permanently implanted into the abdomen of another person?
 - Some jurists like Ayatullah Khomeini initially prohibited transplantations (issue of 'mordar' and 'nejasat' - impurity)
 - Doctors argued that the implanted organ became a living part of the recipients body once blood flowed through it.
- transplantation rendered legally permissible.

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Legal Concerns: Payment

- For Shi'a jurists in Iran, the issue of kidney sales has been eclipsed by the issue of transplantation.
 - The question has not been:
"Can a kidney be bought and henceforth removed and transplanted into a new body,"
 rather it has been:
"now that a kidney has been removed for the legitimate purpose of being transplanted, can the owner of the kidney receive payment for it?"
- Concern for the intention of the organ giver as *seller*, is avoided and made irrelevant.

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In Islamic laws of commerce, if something can be gifted ('hebbeh') it can be sold ('bei') and vice versa.

There must be

- Legitimate utility
- Ownership
- Scholars argue: Islamic traditions prohibiting the sale of body parts such as semen, blood, etc. (on which some prohibitions of Sunni scholars rely) was because at the time they did not have legitimate utility.

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Seller and Donor as One

- Pervasive assumption is that kidney donation poses negligible harm.
- Saving the life of another Muslim eclipses concern for organ seller.
- Organ seller and altruistic donor treated the same.

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A Change in Fatwas

- A secondary ordinance could over-rule the primary ordinance permitting organ sales.
- **Primary ordinance:** based on the “essence of the matter.”
- **Secondary ordinance:** based on secondary considerations, such as hardships that may befall the subject.
- Social concerns often fall outside the purview of primary ordinances.

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Part Three

Creating a Culture of Organ Donation in Iran

Public Attitudes Towards Organ Donation

- Kidney selling:
 - Socially stigmatized
 - Sellers did not express concern for religious perspective.
 - Buyers: many assume it is NOT prohibited since it is permitted in Islamic Republic.
 - Doctors sought out fatwas
 - Brain death donation:
 - Will I really be dead?
 - Will my body be desecrated – improper for Islamic burial
- Fatwas necessary for policy formation, but not formative of public opinion.

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Creating a "Culture" of Organ Donation

Brain-death donation as ethically superior to organ selling.

Public Hospitals have launched an extensive campaign to promote brain death donation.

Objectives:

- Spreading knowledge about brain death donation.
- Building trust in brain death diagnoses.
- Emphasizing the life-saving role of organ donation.
- Highlighting the Islamic virtue of, and heroism in saving a human life.

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- Wide-scale distribution of organ donor cards
- Easy online registration
- Advertisements on TV, newspapers, magazines, radio, sports fields, billboards, public transportation
- Organ donation themed TV shows, soap operas, documentaries
- Annual celebration of "Jashne nafas" - donor families and recipients meet and organ donation is celebrated as a *heroic* and *virtuous act*.
- Celebrities selected as ambassadors

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Message of the Campaign (not entirely based on Islamic theology)

- Brain death is real death the soul has departed the body.
- Brain death is a test and opportunity from God to show our willingness to sacrifice for another human being. A test of faith.
- Organ donors are heroes, as are their families.
- The life of the donor continues in the renewed life of the transplantee.

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Death of a Celebrity

Asal Badiie (1977-2013)

Father: "now that my daughter has passed, her body parts live on in 7 people, and now I have 7 children."



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Concluding Remarks

- Fatwas have been formative in shaping policy (enabler of policy)
- But fatwas not sufficient for motivating action.
- More than letter of the fatwa, we must:
look at how medical fatwas are rendered legible and actionable to doctors, and to the public through policy, media, textbooks, etc.

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Concluding Remarks

- A plurality of jurists with varying opinions exist
- Fatwas are dynamic
- Fatwas change as common sense ('urfi') understandings of various social problems change.
- The making of fatwas is a dialogical process
 - Fatwas can be persuaded by the technical opinions of other experts such as scientists, medical doctors, economists, psychologists, etc.

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Concluding Remarks

- To formulate interventions to alter the attitudes of Muslim populations on organ donation, we must assess to what extent we are responding to concerns that may exceed the content of fatwas.

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