Islamic Legal Views on Organ Donation: A View from Fiqh Councils

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Objectives

Objectives:

- To explain the ethico-legal deliberation of Sunni scholars underlying the *Fatawa* (legal opinions) on organ transplantation
- To describe Sunni *Fatawa* on the living donation of autografts and allografts
- To describe Sunni *Fatawa* on cadaveric organ donation
- To describe Sunni *Fatawa* on receiving autografts, allografts and xenografts
Background

“The Islamic Legal Views on Organ Donation: A View from Fiqh Councils”

The fatwa

1. Question
2. Context
3. Text
4. Mufti or Juridical Councils
5. Fatwa

- Islamic scholars
- Patient
- Physicians
Specifying the question

Organ transplantation

Donation

Living

Auto graft

Allograft

Renewable

Non-Renewable

Singular

Pair

Vital function

Basic function

Receipt

Dead (cadaveric)

Living

Auto graft

Allograft

Renewable

Non-Renewable

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Singular

Pair

Vital function

Basic function

Halal animal

AND halal slaughter

Haram animal

OR non-halal slaughter
Research methods

• Fiqh Councils
  – Al-Azhar Academy of Egypt
  – European Council of Fatwa and Research (ECFR)
  – Islamic Fiqh Academy of India
  – Islamic Fiqh Academy of the OIC
  – UK Shariah Council
  – The Fatwa Committee of Kuwait
  – The Islamic Religious Council of Singapore

Research methods

• Islamic Medical Associations / Organisations
  – Islamic Organisation of Medical Sciences
  – Islamic Medical Association of North America

• Individual jurists
  – Mufti Muhammad ibn Adam al-Kawthari
  – Shaykh Yusuf al-Qaradawi
  – Shaykh Salih al-Muhajjid

• Academic publications
Ethico-legal deliberations

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Arguments against permissibility

- Sanctity of Body
- Ownership
- Harming oneself
- Mutilation
Arguments for Permissibility

• Saving of a life
• Rebut concerns over Sanctity, Mutilation, and Ownership
• Legal Maxim: “Necessities make forbidden things permissible”
  – “But he who is driven by necessity, neither craving nor transgressing, it is no sin for him. Lo! Allah is Forgiving, Merciful” (2:173).

Limits of permissibility

• Areas of Agreement (conditions)
  – Necessity
  – Buying and Selling organs
  – Respect
  – Consent
  – Reproductive glands
• Areas for further research
  – How to prioritize recipients?
  – Is Brain death true (legal) death?
  – Use of reproductive organs permissible?
Sunni legal views on organ donation

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Groups of thought

1. Impermissible to give and to receive
2. Permissible to receive. Permissible to give if living, with conditions, but impermissible to give if cadaveric
3. Permissible to receive, permissible to give (both living and cadaveric), with conditions
**Autograft donation**

- **Definition:** An autograft is an organ or tissue obtained from the same individual to which it is being transplanted. Example: skin graft

- Widely permitted in Islam. The Islamic Fiqh Academy of India, 1989:

  “it is valid to replace a part of a person’s body with another part of the same person if necessity so demands”

**Autograft donation**

Conditions for the validity of the permissibility:

1. The benefits of the operation must outweigh its harmful effects
2. The purpose must be to either:
   - replace a lost organ
   - reshape it
   - restore its function
   - correct a defect
   - remove a malformation which is the source of mental anguish or physical pain


**Allograft donation**

Organ transplantation
- Donation
- Living
- Autograft
- Renewable
- Singular
- Vital function

- Allograft
- Non-Renewable
- Pair
- Basic function

- Dead (cadaveric)

Donation

Receipt
Allograft donation

**Definition:** Allografts are organs taken from one member of a species and received by a member of that same species. Example: from one human being to another.

![Image of organ transplantation process]

Allograft donation - renewable

- **Organ transplantation**
  - Donation
    - Living
    - Autograft
    - Replenishment
  - Non-Renewable
    - Allograft
    - Basic function
- **Receipt**
  - Dead (cadaveric)
  - Pair
    - Vital function
Allograft donation - renewable

- **Renewable organs**: These are organs that regenerate once removed
- The donation of a renewable organ is generally **permissible**. The Islamic Fiqh Academy of Jeddah and the European Council for Fatwa and Research:

  “(An organ) may be transplanted from the body of one person to the body of another person, if such an organ is automatically regenerated”

- In light of this ruling, bone marrow may be donated
Allograft donation – non-renewable

- **The donation of singular organs**: Singular organs are organs that are **congenitally unique** (such as the tongue or the pancreas) or organs that have **become one of a kind** (like a patient who has lost an eye).

- Not allowed to donate singular organs in full: **its removal would cause an essential function to cease**

- Removing a section of the organ which will not result in permanent damage to the donor, such as the lobe of a liver, is permissible.

![Diagram of Allograft donation – non-renewable](image)
Allograft donation – non-renewable

- **The donation of vital organs**: A vital organ is an organ that performs a life sustaining function(s)

- The Islamic Fiqh Academy of Jeddah said
  
  "It is forbidden to transplant from a living person to another, a vital organ, such as the heart, without which the donor cannot remain alive"

Allograft donation – non-renewable

- Live donation of vital organs is akin to suicide, which is a serious sin according to Islamic law

- Little significance in the UK / US as such operations are not carried out
Allograft donation – non-renewable

- Donation of an organ that performs a basic function:
  - Allowed to donate if:
    - Removing the live organ does not result in permanent damage to the donor
    - It will save the life of the recipient
    - High likelihood of success
Cadaveric donation

- Cadaveric organ donation takes two forms:
  1. Donation after circulatory death (DCD)
  2. Donation after brainstem death (DBD)

- In both cases (DCD/DBD) organs are retrieved only after an independent clinical confirmation of death
Cadaveric donation

• *Donation after circulatory death (DCD):* This is the retrieval of an organ after asystole (the patient’s heart irreversibly stops beating)

• Traditional definition of death, generally accepted by Muslim scholars

Cadaveric donation

• *Donation after brainstem death (DBD):* This is the retrieval of an organ when the function of the donor’s brainstem is permanently lost, leaving him or her irreversibly unconsciousness and incapable of breathing independently

• *British and American law accepts this as a definition of death and the ECFR have agreed*
Cadaveric donation

- Most scholars permit cadaveric donation under the conditions that the transplantation either:
  1. Keeps the beneficiary alive
  2. Restores a basic function
  3. Consent be given first

Those in agreement with cadaveric include:

- The Islamic Fiqh Council of Jeddah
- The European Council for Fatwa and Research
- The UK Shariah Council, the National Fatwa Council of Malaysia
- The Islamic Medical Association of North America
- The Islamic Religious Council of Singapore
- The Fatwa Committee of Kuwait
- Al-Azhar Academy of Egypt
Cadaveric donation

- Some scholars deem cadaveric donation to be impermissible
- Islamic Fiqh Academy of India said in 1988:

  ‘If someone expressed his wish that after his death, his organs may be used for transplantation purposes, [then] it cannot be considered as Wasiyah [a will] according to Shariah and is invalid.’


Cadaveric donation

- The Islamic Religious Council of Singapore in 1973 also held this view because one does not own one’s body
- However in 1986 the fatwa in Singapore was revised based on the legal maxim that *Necessities change the forbidden into the permissible*
- The dire need for organ donors and the paucity of available organs were sufficient reasons to allow cadaveric donation

Cadaveric donation

- The definition of death is a whole lecture in itself
- It is impossible to clinically determine whether total, irreversible brain tissue death has occurred (radioisotope scanning can help test for effective cerebral blood flow but not brainstem)
- The questions arise that from this are about whether clinical criteria for the diagnosis of death are acceptable in Islam

The receipt of organs

- Organ transplantation
  - Donation
    - Living
      - Autograft
        - Renewable
          - Singular
            - Vital function
        - Non-Renewable
          - Pair
            - Basic function
    - Allograft
    - Xenograft
      - Halal animal AND halal slaughter
      - Haram animal OR non-halal slaughter
  - Dead (cadaveric)

Receiving an organ donation

- It is permissible in Islam to receive an organ transplant under the following conditions:

1. The patient has a Non-Functioning organ
2. High risk of Morbidity or Mortality to Patient
3. No other viable alternative
4. Strong likelihood of a successful transplantation

Receiving a xenograft

- Organ transplantation
- Donation
- Living
- Autograft
- Renewable
- Singular
- Vital function
- Basic function
- Allograft
- Non-Renewable
- Pair
- Xenograft
- Dead (cadaveric)
- Halal animal AND halal slaughter
- Haram animal OR non-halal slaughter
Receiving a xenograft

- **Xenograft**: An organ or tissue obtained from different species such as pigs

- Many scholars state Xenografts are permissible, under two conditions:
  1. They come from permissible animals
  2. The animal is slaughtered according to Islamic standards

Receiving a xenograft

- Islamic Fiqh Academy of India state there are exceptions to these two conditions if:
  1. No other alternative
  2. Person’s life is in danger
  3. An organ is at risk of being completely damaged

Evaluation

- Fatwas are missing textual references
- Lack of context to fatwas
- Outdated
- Grading of legal ruling unclear: mubah vs wajib?
- Is there a need for an updated fatwa?
Summary

• Ethico-legal argument against organ donation include issues of human sanctity, ownership, harm and mutilation
• Ethico-legal arguments for organ donation include the saving of a human life, rebuttal of the arguments against, and the maxim of darurah
• Controversy remains amongst Muslim scholarship

Summary

• Sunni scholars have argued against transplantation but more argue for
• Some of those in support of some types of organ donation have argued against cadaveric donation
Thank You

Any Questions?

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