

Islamic Ethics of Organ Transplantation and Brain Death

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Abstract

The Kingdom of Saudi Arabia, the most conservative Islamic country, is playing a major role in formulating ethical Islamic jurisprudence views and rules in the rapidly expanding field of organ transplantation, and in implementing these new rules in its proliferating centers. The Islamic O' Sool or fundamentals of Islamic jurisprudence through which the jurists reach their rulings are discussed briefly. The historical background of the Islamic jurists' views on organ transplantation and the recent Fatwas (decrees) are highlighted. The conditions needed for allowing both cadaveric and living donors are discussed.

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Introduction

The ethical problems raised by recent advances in medicine are the domain of the ethicist, medical philosopher, lawyers, members of Parliament, religious leaders as well as physicians involved in the dilemmas of day to day problems. Islam is not only a religion; it is a code of life and hence encompasses the secular with the spiritual, the mundane with the celestial, through its holistic approach. The Islamic scholar is both the jurist and the ethicist. It is true that new methods and techniques in medicine have no precedent and hence make it difficult for Islamic jurists to give their verdict. However, the Islamic jurists were very active in the last decade and held many conferences to which many doctors were called to discuss issues such as brain death, organ transplantation, and new methods of procreation, abortion and euthanasia. They passed resolutions that help formulating the rules regarding medical ethics in the arena of rapidly advancing the medicine of high technology.

It is important to have an idea how the jurists reach their rulings and judgment on these thorny hair-raising contentious issues. Islamic jurisprudence is based on two pillars:

- 1) O' Sool (fundamental, basis)
- 2) Foroo (branches) which include the actual rulings of different Islamic jurisprudence schools in various aspects of life and worship.

The jurist reaches his verdict through Careful study of the Holy Quran the Sunna (the trodden path) which include the sayings and speeches of the Prophet Mohammed, Peace Be Upon Him (PBUH) (Sunna Qaw-liya), his deeds (Sunna Filiyya and his approvals (Sunna Taqiiriya). The paradigmatic behavior of the Prophet Mohammed (PBUH) is the example and model that each Muslim aspires to reach. If the jurist is unable to reach a verdict through studying the Holy Quran and scrutinizing the Sunna, he uses analogy and reasoning (Ijtihad or Qiyas). He can also use other sources e.g. Al Masaleh Almursalah, which simply means taking care of public interest provided it does not clash with a clear text of the Quran or Sunna. The Hanafi School of jurisprudence has in addition a similar source which they call Isthsan, i.e. seeking the best solution for general interest. Ijma is a unanimous opinion of the whole community of Islamic jurists all over the world on a certain issue. It was, and still is, very difficult to achieve; however the consensus of the majority of jurists is more pragmatic. In fact, almost all the rulings that were passed by Islamic jurists conferences were passed by majority of votes.

Organ Transplantation in the Islamic Heritage

Organ transplantation is not a novelty of the twentieth century. Ancient Hindu Surgeons described methods for repairing defects of the nose and ears using autografts from the neighboring skin. Susruta Sanhita, an old Indian document written in BC700, described elegantly the procedure which was emulated by the Muslim Surgeons and later on by the Italian Tagliacozzi and the British Surgeons working in India ^[1]. The Prophet Mohammed himself replanted the eye of Qatada ibn Noman, the arm of Muawith ibn Afra and the hand of Habib ibn Yasaf which were amputated in the battles-of Ohod and Bader ^{[2],[3]} (Retransplantation).

Muslim jurists sanctioned transplantation of teeth and bones which was practiced by eminent Muslim surgeons. Imam Nawawi (631-67H/1233-1277AD) discussed fully this subject in his voluminous reference textbook of jurisprudence Al Majmoo ^[4] and his concise textbook Minhaj Attalibin ^[5]. Al Imam Asshirbini commented on this subject in his book Mughni Almuhtaj ^[6]. Several other jurists of the era (12th-14th century AD) sanctioned autografts, allografts and xenografts.

Islamic Principles and Rules Related to Organ Transplants

The major Islamic Principles and rules related to seeking remedy, the value of human being and saving its life or health, and the importance of the sense of human brotherhood and charity will be highlighted in the following items.

1. Seeking Remedy

Islam considers disease as a natural phenomenon, and a type of tribulation which expiates

sin. Those stoics who forebear and endure in dignity are rewarded in this world and on the Day of Judgment. However, man should seek remedy. The Prophet Mohammed (PBUH) said: "O Servants of Allah seek remedy. Allah who caused ailment, also brought cure and redemption" ^[71]. He also declared that there is a cure for every illness, though we may not know at the time ^[71]. Muslims are encouraged to search for new modalities of treatment and should apply them if proved successful.

Organ transplantation is a new modality of treatment for serious life threatening diseases that proved successful and hence should be applied. Blood transfusion was sanctioned by all contemporary jurists though blood is an organ and is "Najas". Muslim jurists allowed the use of "Najas" in medicine if it was deemed necessary for cure (some would allow it only if it improved the condition of the patient) and if it was prescribed by a competent Muslim physician. Some jurists would accept the advice of non-Muslim physician on this point, if he is competent and known to be a man of integrity.

Many jurists discussed the use of porcine or other animal bone grafts to be used by man when needed a thousand years ago. Zakaria Al-Qazwini, a grand Qadi of Iraq (600-628H/1203-1283) noticed that porcine bone graft took better than other xenografts and functioned more efficiently. On this issue porcine xenografts with genetic manipulation may solve the problem of shortage of organs especially hearts. If it is the only available treatment to save the life of the patient, the Muslim jurist would exonerate both the patients and surgeon from any blame. The Holy Quran explicitly allowed those who are in dire necessity to eat pork, dead meat or blood ^{[9],[10],[11]}.

The new methods of treatment should cause no harm, or minimal harm compared with the great benefit expected from it, (Principles of non maleficence and beneficence). The recipient of the new modality of treatment should give his informed consent, (Principle of autonomy). The guardian of the minor recipient should give consent on behalf of the minor except in emergency situations when the life of the minor is threatened. However the donation of a minor, and that of the mentally incapacitated is invalid. The guardian or parent can not act as proxy in such a case as donation of an organ is not in the best interest of the donor ^[12].

2. The Value of Human Being

Man is the viceregent of Allah (God) on earth; "Behold thy Lord said to the angels, I will create a viceregent on earth" ^[13]. He also said in the Holy Quran "We have honored the progeny of Adam, provided them with transport on land and sea, given them for sustenance things good and pure, and conferred on them special favors above a great part of Our Creation" ^[14]. The human being should always keep his dignity even in disease or misfortune. The human body living or dead should be venerated likewise. The Prophet Mohammed (PBUH) rebuked a man who broke the bone of a deceased which he found in the cemetery and said: "Breaking the bones of a dead man is similar to breaking the bones of a living man" ^[15]. Due respect and reverence should be given to the dead body as exemplified by the Prophet Mohammed (PBUH) who stood in veneration for a passing by funeral of a Jew, at the time when Jews were his bitter enemies. One of the

companions exclaimed; "It is only a funeral of a Jew!" The Prophet (PBUH) answered "Is it not a human soul?" [\[16\]](#) .

All human beings are equal and their deeds and intentions will only be judged by Allah. The Prophet Mohammed (PBUH) said "An Arab is not better than non-Arab, a white is no better than a black and vice versa, except by the fear of Allah and good deeds". The Holy Quran stressed this fact "O men! Behold We have created you all out of a male and a female (i.e. Adam and Eve) and have made you into nations and tribes, so that you might come to know one another. Verily the noblest of you in the sight of Allah is the one who is most deeply conscious of him. Behold Allah (God) is all knowing all aware" [\[17\]](#) . The dead body should be prepared for burial as soon as possible to avoid putrefaction which occurs rapidly in hot climates. Cremation is not allowed.

Mutilation is proscribed and considered an anathema. However, doing a postmortem or dissection to study anatomy or donating an organ is not an act of mutilation. Mutilation is done with malice and vengeance and serve no good purpose, while postmortem and studying anatomy is essential to study medicine and to increase our knowledge about diseases and human body. Ibn Rushd (Averros) of Cordova (12th century AD) said those who study anatomy see the greatness of God and become more faithful to Him. Imam Shafi who lived in the 8th century AD said "Knowledge (science) has two major branches: that which concerns religious and that which concerns the human body" [\[18\]](#) . Similarly, donation of an organ is not mutilation. It is an act of charity and benevolence as it is going to save a human life. The Holy Quran says: "That who saves the life of one person shall be as if he saves the life of all mankind" (5:32) .

The harm done, if any, by removing an organ from a deceased should be weighed against the benefit obtained and the new life given to the recipient. The principle of saving human life takes precedence over whatever assumed harm would befall the corpse. However organs cannot be harvested unless the deceased had consented in his life-time and his relatives agree. If the identity of the corpse is unknown then a Muslim Qadi (magistrate) can order procurement of organs from such a cadaver [\[Table - 1\]](#).

In Saudi Arabia, the consent of the relatives is imperative, even if the deceased had consented in his lifetime. Other Fatwas acknowledge the consent of the deceased as sufficient for organ harvesting. The Kuwaiti Fatwa (1979) allowed the procurement of organs from accidents cases even though there is no previous consent of the deceased or consent of the relatives, if it is deemed necessary to save a human life [\[20\]](#) . The Kuwaiti parliament did not go that far, and require the consent of the deceased in his life time, or the consent of the relatives after his death.

3. Principle of Doing no Harm (Non-Maleficence)

"Premium non nocere" is invoked in the case of a living donor. The donor cannot give one of his vital organs which would end his life. It is an act of homicide or suicide, both of which are considered as one of the most detestable crimes in Islam. Donation should cause no harm or a minimal increased risk to the health of the donor. It invokes the principle of accepting the lesser harm when faced with two evils. The harm done by the

disease which can kill a human being is not to be compared to the supposed harm incurred by donation.

4. The Human Body is the Property of Allah (like everything else in the Universe).

Man is entrusted with his body as well as with his wealth. He should use it in the proper way, envisaged and prescribed by Allah and His Messenger. Donation of organs is an act of charity, benevolence and altruism in which many lives are saved. Human organs are not a commodity nor a chattel, and hence should only be given for the love of fellowmen. Commercialism, entrepreneuring and organ trafficking is an affront to human dignity and hence deplored and proscribed.

In order to avoid any under the carpet dealings the governments (not the Fatwas) restricted the living donors to relatives. The donor, however, should not suffer financially as a result of his donation. He should not burden any expense of the operation or hospitalization. In fact he should be compensated for his loss of income during his stay in hospital and convalescence. Encouraging donors by giving medals, certificates of recognition, provision of free medical services, or provision of half rate tickets in air-sea or land travel are all considered Islamically ethical and acceptable.

Recent Islamic Fatwas (Resolutions) Regarding Organ Transplantation

Sheikh Hassanein Makhloof, the grand Mufti of Egypt allowed corneal grafting in 1952. He was followed by Sheikh Hassan Maamoon, the grand Mufti of Egypt in 1959 (Fatwa No. 1087 dated 14th April 1959)/ His successor sheikh Hureidi extended the Fatwa to other organs in 1966 (Fatwa No.939). Sheikh Khater allowed harvesting of skin from unidentified corpses in 1973 and sheikh Gad Al Haq sanctioned cadaveric donors (conditions listed in [\[Table - 1\]](#)) and living donors (conditions listed in [\[Table - 2\]](#)). The Saudi Ulema sanctioned corneal transplants (1976) and organ transplants from living and cadaveric donors [\[Table - 3\]](#). Many Islamic countries followed suit, e.g. Malaysian Fatwa of 1969, the Algerian Fatwa of 1972, the Kuwaiti Fatwa of 1979 and the Fatwas of Islamic jurists conferences (4th and 6th International Conferences of Islamic Jurists O.I.C.). [\[Table - 6\]](#) lists most of these Fatwas.

The subject of brain death was not addressed in all these Fatwas but was discussed for the first time in the Second International conference of Islamic jurists held in Jeddah 1985, However, no decree was passed until further consultations and studies were made. In the third International conference of Islamic jurists held in Amman in October 1986, the historical resolution No. 5 was passed, [\[Table - 4\]](#) which equated brain death with cardiac death. This paved the way for the rapid proliferation of cadaveric transplants in Saudi Arabia, the leading Islamic country in this field [\[Table - 5\]](#). The 6th international conference of Islamic jurists (OIC) held in Jeddah 1990 studied the new frontiers of organ transplantation vis:

a) transplantation of the nervous tissue as a method for treating Parkinsonism [More Details](#) and other ailments.

- b) transplantation from anencephalics.
- c) transplantation from embryos aborted spontaneously, medically or electively.
- d) left-over pre-embryos from in vitro fertilization projects.
- e) transplantation of gonads and reproductive organs.

The jurists allowed transplantation of nerve tissues to treat ailments such as parkinsonism, if this method of treatment proved superior to the well established methods of treatment. The source of the nerve tissue may be.

- a) The suprarenal medulla of the patient himself (autograft).
- b) The nerve tissue from an animal embryo (xenograft)
- c) Cultured human nerve cells obtained from spontaneous or medically indicated abortions.

The conference deplored the performance of abortions for the sake of procuring organs.

It reiterated the Islamic view against elective abortion, which is only allowed to save the life or health of the expectant mother. If, the fetus is not viable, organs can be procured, if the parents donate, and only when the fetus is declared dead. The aborted fetus is not a commodity and commercialism is not allowed. Anencephalics cannot be used as organ donors until declared brain or cardiac dead. The full informed consent of the parents should be obtained in every case.

Regarding the left-over preembryos from IVF projects, the jurists recommended that only the needed ova should be fertilized by the husband's sperms. However, if excessive ova were fertilized, they should be left to die spontaneously. Cryopreservation, donation or growing of the preembryos for organ procurement or even medical and scientific research is not allowed. Gonads should not be transplanted as they carry the genetic inheritance from the donor, however, the jurists allowed the transplantation of other internal sex organs.

Conclusion

This review shows the rapid acceptance of organ transplantation as a new modality of treatment that saves many lives. Saudi Arabia (the most conservative Islamic country) is leading the rest of the Islamic world in cadaveric transplantation. Until facilities for resuscitation improve and intensive care units proliferate, organ transplantation from cadavers will be limited. Islamic teachings and Fatwas permit all types of organs

transplantation if the required conditions are fulfilled.

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