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Introduction

The Qur'an, in various passages, emphasizes the fact that Allah (SWT) is the One who bestows life and causes to die. For example:

It is Allah who creates you, and take your souls at death; and of you there are some who are sent back to a feeble age, so that they know nothing after having known (much): For Allah is All-Knowing, All-Powerful. (al-Nahl, 16:70) From this verse we understand that death is inevitable 'in time': it may occur at any time during infancy or youth or old age. The verse alludes to the helplessness of senility that some people experience during their extended life span.¹ It is also the case that before his inevitable end man is afflicted, with diseases which necessitate his resorting to medical care and attention. Often, he is able to overcome his ailments by resting, by taking relevant medications, by observing an appropriate diet, and so on. However, we cannot rule out the possibility that at some point in life one of his organs may cease to function properly. In this event, depending on the nature of the damage, he may have to undergo corrective surgery or have the defective organ replaced altogether.

Insofar as organ transplantation itself is concerned one must bear in mind that

both the Qur'an and Sunnah neither sanction it nor condemn it.

Contemporary Muslim jurists have deliberated on the issue and proposed certain juristic guidelines based on deductions from the broad teachings of the two original sources of the Shari`ah, namely, the Qur'an and Sunnah. As normally happens in all matters not specifically dealt within these two original sources, there are differences of opinion among the jurists.

I. Opposing viewpoints

Two prominent Muslim scholars who have written against organ transplantation are the late Mufti Muhammad Shafi` of Pakistan and Dr `Abd al-Salam al-Sukri of Egypt.

Mufti Shafi` holds organ transplantation as not permissible on the basis of the following principles: sacredness of human life/body; the human body being an amanah (trust); and finally that such a procedure would be tantamount to subjecting the human body to material ends.¹ These principles may be elucidated thus:

A. Sacredness of human life/body

From the teachings of the Holy Qur'an it can be deduced that man is enjoined to protect and preserve his own life as well as that of others. For example, man is forbidden from taking his own life:

Do not kill (destroy) yourselves: For verily Allah has been to you Most Merciful (al-Nisa', 4:29).

Make not your hands contribute to your own destruction (al-Baqarah, 2:195).

Likewise, the Qur'an imbues in man the gravity of the sin for taking someone else's life:

If anyone slays a human being unless it be in legal punishment for murder or for spreading corruption on earth it shall be as if he had slain the whole of mankind; whereas if anyone saves a life, it shall be as if he had saved the life of all mankind (al-Ma'idah, 5:32).

In the Hadith literature it is recorded that the Prophet Muhammad (PBUH) made the following declaration in his Farewell Sermon (Khutbat al Wada`ah)

Your life and your property and your honour are sacred until you meet your Lord."²

The above mentioned citations have led Muslim jurists to include any form of aggression that is directed, not only against the life of a human being but against parts of his/her body as a crime.³ This view also gains support from the following hadith:

Breaking the bone of a dead person is equal in sinfulness and aggression to breaking it while a person is alive.⁴

In the light of the above hadith the following questions may rightly be asked: How can one therefore be permitted to cut up a man's body and remove an organ from it? Would that not constitute an act of aggression against the human body and thus tantamount to mutilation of the body?

B. The human body as an amanah
The Holy Qur'an (17:70; 21:20) tells us that Allah (SWT) has honoured man, made serviceable to him whatever is in the heavens and on earth as a blessing and mercy. Likewise, it also mentions that Allah (SWT) has endowed man with all that he is in need of in respect of bodily organs (90:8). This understanding would lead one to infer that man has no

right to donate any of his organs since these organs are not in reality his own, but have rather been given to him as an amanah (trust).

C. Subjecting the human body to material ends

The impermissibility of subjecting the human body to material ends may be deduced from these two examples:

Firstly, from the Fatawa `Alamgiriyyah, it is stated that if a person, owing to hunger, finds himself on the verge of death, and is unable to find even the meat of a dead animal in order to save himself, and at that instant is offered human flesh, it would not be permissible for him to partake of it.⁵

Secondly, it is recorded in the Hadith Literature that the Prophet Muhammad (PBUH) said that Allah (SWT) has denounced or cursed the one who joins the hair of a woman to that of another so as to make her hair appear long - and He (SWT) has also cursed the woman with whose hair such hair is joined.⁶ While in the Hidayah, it is stated that it is permissible for women to increase their locks by means of animal wool.⁷ It may, therefore, be rightly inferred that the use of human hair for this purpose is unlawful. By extension, from the above two examples, the use of parts of the human body, i.e. organs, will also be unlawful.

Dr al-Sukri makes a case against organ transplantation based on the following considerations:

A. Sanctity of the human body

On the basis of this hadith: `Breaking the bone of a dead person is equal in sinfulness and aggression to breaking it while a person is alive', the `ulama'

(Muslim scholars) make it a duty to re-enter human bones or remains if, for any reason, they are taken out of the graves. It is also equally obligatory to bury the limb that has been severed from a criminal, as well as human nails, hairs, etc. in honour of the sanctity of the human body.⁸

B. Prohibition of making use of forbidden things as medicines

The following hadith of the Prophet (PBUH): "Allah created the disease and also the cure. For every disease He has provided a cure. So treat yourselves with medicines, but do not treat yourselves with prohibited things".⁹ renders utilizing human organs in treatment procedures impermissible by virtue of the fact that, as already cited, the Hanafi school regards making use of human bones in treatment as detestable.

C. Safeguarding the honour of human life

Abd al Rahman ibn `Uthman (RA) reports that a doctor came to the Prophet (PBUH) and asked him about the permissibility of making use of frogs in medicines. The Prophet (PBUH) forbade him from doing that.¹¹ Since this hadith censures the killing of frogs so as to use them in medicines, would it not, therefore, be more deserving to safeguard the honour of human life by not allowing any human organs to be used in treatment procedures?¹²

D. Avoiding the doubtful

In a hadith, the Prophet (PBUH) said:

Both legal and illegal things are obvious, and in between them are doubtful matters. So whoever forsakes those doubtful things lest he may commit a sin will definitely avoid what is clearly

illegal; and whoever indulges in these doubtful things boldly, is likely to commit what is clearly illegal. Sins are Allah's hima (i.e. private pasture) and whoever pastures (his sheep) near it is likely to trespass in it at any moment.¹³ In the light of the above, utilizing human organs in transplantation procedures would be tantamount to indulging in the doubtful. Thus if one were to avoid resorting to organ transplantation one would benefit in two ways. Firstly, if organ transplantation were to fall within the prohibited category, then one would have safeguarded oneself from trespassing the limits set by Allah (SWT). Secondly, if organ transplantation were to be within the permissible category then one would be rewarded for having avoided it lest it might be within the perimeters of the forbidden.¹⁴

II. Favorable viewpoints

To date, no Muslim scholar has offered to write an argument unreservedly in favour of organ transplantation. However, Muslim scholars in various parts of the world have either written arguments in favour or issued positive religious decrees (fatawa) on the issue.

Muslim scholars who advocate the permissibility of organ transplantation are of the opinion that it should be recognized as a form of altruistic service to fellow Muslims.¹⁵ Their stance on organ transplantation may be summarized as follows:

A. Al-maslahah (public welfare)

It is true that Islam forbids any act of aggression against human life as well as the body after death. Thus if one were to take an organ out of the dead man's body

so as to transplant it into another person, it could justifiably be argued to be tantamount to mutilation of the body and violation of the sanctity of the corpse. However, it is to be noted here that the Islamic legal system takes the interests of man into consideration. This accounts for the following juridical rules:¹⁶

- (i) Necessity makes the unlawful permissible.
- (ii) When two interests conflict let the one which will bring greater benefit take precedence.
- (iii) If forced to choose, choose the lesser of the two evils.

The above rules are founded on the principles of establishing what is in the general interest and preventing what is against it. So, if the general gain outweighs the negative aspect of an action, it is allowed, but if the negative consequences of such an action outweigh the good then it is prohibited. In this context, for example, Islamic Law would permit the cutting of the belly of the dead pregnant woman in order to remove the foetus should any movement be detected.¹⁷ Thus, the right of the living supercedes consideration over the dead.

Likewise, Islamic Law would allow the cutting of the belly of the deceased who had swallowed a valuable diamond or a piece of gold in order that it may be returned to its rightful owner. The logical explanation for this is that if the valuable article had belonged to the deceased himself then his heirs would be in a position to benefit from it.¹⁸

Hence, following the same line of argument, after a person has died, it would be justified to retrieve the desired

organ from that person's body for the purpose of transplanting it into that of another living person. This act would be regarded as a commendable gesture since as a result of this procedure, the quality of life of the living would be enhanced.

It ought to be noted, however, that Muslim scholars who advocate the permissibility of organ transplantation do not give outright approval for the practice. They are of the view that the permissibility of organ transplantation should be hedged with certain restrictions as enumerated below:¹⁹

1. That 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 have been obtained.
4. Death must have been fully established by Muslim doctors of upright character before such a venture is undertaken.
5. The recipient has been informed of the operation and its implications.

B. Al-Ithar (Altruism)

The Holy Qur'an and Sunnah exhort Muslims to co-operate with one another and to strengthen the bond of brotherhood among them. The Qur'anic imperative in this regard is:

Help you one another in righteousness and piety (al-Ma'idah, 5:2)

and from the Sunnah the following hadith may be cited:

The believers, in their love and sympathy for one another, are like a whole body; when one part of it is affected with pain the whole of it

responds in terms of wakefulness and fever.²⁰

Thus in the light of the above teachings, a living person's gesture to donate one of his organs to a sibling or another person who may be in dire need of it should be viewed as an act of altruism, that of some people sharing what they have for the benefit of others. Here again, the following restrictions should be taken heed of:²¹

1. The consent of the donor must be obtained.
2. That the transplantation is the only form of treatment possible.
3. That there is no obvious danger to the life of the donor.
4. The respective transplantation has been proven successful in the past.

Moreover, it should be noted that a vital organ (like the heart) cannot be donated in view of the fact that this would result in the death of the donor. The late Shaykh Jad al-Haqq explains that this prohibition has no exception, whether the one from whom the vital organ is taken has given his/her permission or not. If that person gave permission for the transplantation of his/her vital organ into someone else's body this would be tantamount to suicide. On the other hand, if that person had not given any consent for his/her vital organ to be transplanted into someone else's body then the people who undertake doing that would be guilty of taking the life of that person without any justifiable cause.²² To protect one's life and organs is an obligation. Thus one cannot prefer the life of another over one's own except if it be for a higher objective like the protection of the din (Islamic Faith) by

giving one's life in jihad (for the defence of Islam).²³

C. Sale of organs

Insofar as the selling of human organs is concerned, Muslim scholars concur that such sale would be deemed *batil* (i.e. null and void)²⁴ based on the following considerations:

(i) A person cannot trade in something of which he is not the owner.²⁵

(ii) A hadith which states that: 'Amongst those who would be held accountable on the Last Day is one who sold a freeman and ate up the proceeds.'²⁶

Thus if one were to sell a freeman, the buyer would have no right over him during his lifetime since the contract of sale was *haram* (prohibited) from the very outset. The body of a person, living or dead, belongs to Allah (SWT) alone. It follows, therefore, that no one, and not even one's progeny, has any right to sell, donate or dispose of another person's body (organs included) except in the manner prescribed by Islam, that is, by proper burying of the deceased.

(iii) Such a practice would lead to abuse in the sense that it could result in the organs of the poor being sold in the market like any other commodity.²⁷

D. Non-Muslim organs

The permissibility for Muslims to receive the organs of non-Muslims is based on the following two conditions:²⁸

1. No organs are available from Muslims.

2. A Muslim's life would be in danger should the transplantation not be carried out.

In order to circumvent the problem of Muslims becoming recipients of non-Muslim organs, some of the contemporary Muslim jurists are of the opinion that a Muslim's gesture in donating any of his organs is to be categorized as *fard kifayah*²⁹(a collective obligation if fulfilled by the few absolves the generality).

Islamic juridical resolutions on organ transplantation

As far as religious decrees (*fatawa*) on contemporary problems are concerned, there exist in Saudi Arabia and India independent juridical academies under the name *al-Majma` al-Fiqhi al-Islami* (Islamic Juridical Academy) which meet at regular intervals in order to deliberate on a variety of issues affecting Muslims in their social, political and economic spheres of life.

I. Saudi Arabian Juridical Academies

In Saudi Arabia, there are two Islamic Fiqh Academies. One of them is based in Makkah and the other in Jeddah. The Makkan academy functions under the auspices of *Rabitat al-`Alam al-Islami* (Muslim World League) and certain prominent Muslim scholars from all over the world have been co-opted as its members. Its religious decrees are issued in its journal *Majallat al-Majma` al-Fiqhi* which is published bi-annually. The Jeddah academy is an organ of the Organisation of Islamic Conference (OIC). Its officials are drawn from member-states and from some other countries.³⁰ Its resolutions and recommendations are collated and published.

II. Islamic Fiqh Academy Of India

Al-Majma` al-Fiqhi al-Islami (al Hind) (Islamic Juridical Academy -India) was founded by the renowned Muslim religious scholar, Qadi Mujahid al-Islam. It is based in the state of Bihar in India. This academy holds at least two seminars on Islamic juridical issues every year in different cities throughout India.³¹ Its proceedings are published in its quarterly Urdu journal, *Bahth-o-Nazar* (Research and Studies).³²

A. Resolutions on Autotransplant

The Council of the Islamic Fiqh Academy of the Muslim World League, Makkah, at its eighth working session (1405 AH/1985) resolved that it is permissible within the *Shari`ah* to take a part of the human body and transplant it into the same body like removing the skin or bone in order to graft it to some other part of that same body.³³

The Council of the Islamic Fiqh Academy of the Organisation of Islamic Conference, Jeddah, Saudi Arabia, at its fourth working session (1408 AH/1988) resolved that from the *Shari`ah* point of view an organ may be transplanted from one part of the body to another part of that same body, provided it could be ascertained that the benefits from this procedure would outweigh the harmful effects of it. Furthermore, it resolved that it is also permissible for such a procedure to be undertaken for the purpose of replacing a lost organ, or reshaping it, or restoring its function, or correcting a defect, or removing a malformation which was the source of mental anguish or physical pain.³⁴

The Islamic Fiqh Academy of India, at its first Islamic Jurisprudence Seminar (Delhi, March 1989), resolved that it is

valid to replace a part of a person's body with another part from the same person on the ground of necessity.³⁵

B. Resolutions on Homotransplant/Allotransplant

The Council of the Islamic Fiqh Academy of the Muslim World League, Makkah, at its eighth working session (1405 AH/1985) resolved that it is permissible within the Shari`ah to remove the organ from one person and transplant it into another person's body in order to save the life of that person or to assist in stabilizing the normal functioning of the basic organs of that person. Likewise, the Academy pointed out that such a procedure does in no way violate the dignity of the person from whose body the organ had been removed. Hence, the act of donating one's organ is to be viewed as a permissible and praiseworthy act as long as the following conditions are met:

- (i) That the donor's life is not harmed in any way.
- (ii) That the donor voluntarily donates his/her organ without any form of coercion.
- (iii) That the procedure is the only medical means available to alleviate the plight of the patient.
- (iv) That the success rate of the procedures for removing and transplanting the organ is relatively high.³⁶

The Islamic Fiqh Academy of India, at its first Fiqh (Islamic Jurisprudence) Seminar (Delhi, March 1989), resolved that transplantation of human organs is permissible in a desperate and unavoidable situation wherein the patient's organ has stopped functioning

and there is a danger that he/she would lose his/her life if the organ were not replaced. Likewise, it is also permissible for a healthy person, in the light of the opinion of medical experts, to donate one of his/her kidneys to an ailing relative.³⁷ Insofar as corneal transplant is concerned, the Council of the Islamic Fiqh Academy of the Organisation of Islamic Conference, Jeddah, Saudi Arabia, at its fourth working session (1408 AH/ 1988) resolved that from the Shari`ah point of view such a procedure is permissible.³⁸

C. Resolution on Heterotransplant

The Council of the Islamic Fiqh Academy of the Muslim World League, Makkah, Saudi Arabia, at its eighth working session (1405 AH/1985) resolved that it is permissible within the Shari`ah to transplant the organ of an animal which has been slaughtered according to Islamic rites and/or that of other animals out of necessity.³⁹ This sort of resolution on heterotransplants was also approved by the Islamic Fiqh Academy of India, at its first Islamic Jurisprudence Seminar (Delhi, March 1989).⁴⁰

From the above resolutions, it appears that there is consensus among the different Islamic juridical bodies that a Muslim, while living, may donate one of his organs, but not a vital one such as the heart. Equally, a Muslim may become the recipient of human or animal organs. This brings us to the question as to whether it would be permissible for a Muslim to make a will, while still alive, stipulating his/her consent to donate his/her organ after death; or alternatively who would have the jurisdiction to

assent to the donation of the dead person's organ in the event that no such clause has been stipulated in the deceased's will?

The Inclusion of Organ Donation into one's Will

Al-Wasiyyah is the Arabic equivalent of what is termed today as the last will and testament. The drafting of a such a will during one's lifetime is divinely ordained. The Qur'anic imperative in this regard is as follows:

O you who believe! When death approaches any of you, (take) witnesses among yourselves when making bequests, two just men of your own (kindred) or others from outside (your kindred) if you are journeying.....(al-Ma'idah, 5:106)

Likewise, the Prophet Muhammad (PBUH) also emphasized the need to write down one's will. He said:

"It is not right for any Muslim person, who has anything to bequeath, that he may pass even two nights without having his last will and testament written and kept ready with him".⁴¹

However, it ought to be noted here that according to Islamic Law, the proportionate shares that the legal heirs receive from the deceased's estate are neither dependent on a will nor on any other direction of the deceased. Rather, these shares are governed by certain rules that have been laid down in the Islamic law of inheritance.⁴² Thus what can be included in a Will are certain specific stipulations, for example that which relate to the affairs of the testator's young children, facilitating the marriage of the testator's daughters, and the devolution of one third of the

testator's estate⁴³ in favour of a particular person or a charitable institution.

Today, modern science has made it possible to harvest the organ of the deceased and to transplant it into the living for the purpose of improving the latter's quality of life. The question that arises here is whether it is permissible for the testator to include organ donation into his/her will?

As no explicit 'nass' (text) exists either in the Qur'an or in the Sunnah on this question, differences of opinion prevail among Muslim scholars.

I. Negative Resolution

The Islamic Fiqh Academy of India, during its Second Fiqh Seminar held between 8 - 11 December 1989 at the Hamdard Convention Centre, New Delhi, resolved that if a person directed that after his death his organ should be used for the purpose of transplantation (testamentary disposition, as is commonly known), it would not be considered as wasiyyah (will) according to Shari`ah.⁴⁴

The arguments that may have influenced the adoption of this negative resolution are based on, firstly, the concept that human organs are an amanah from the Creator and, secondly to the stance that human organs cannot be valued or priced in the way that human possessions can.

A. Human Organ: an 'Amanah'

As discussed previously there are Muslim jurists who regard the human body (including its parts) as an amanah (trust). Therefore, since a human being does not own his body, he/she cannot make a gift in respect of any part of his/her body either during his/her

lifetime or after death. Thus to include organ donation in one's will would not be in order since one can not give away that which one does not legally own.

B. Human Organ: Invaluable

The testator's estate is termed in Arabic *mal mutaqawwam* (asset upon which a price can be set). Muslim jurists are of the opinion that a human being's body (organs included) is *mal ghayr mutaqawwam* (not able to be valued i.e. no price can be set for it).⁴⁵ Thus it logically follows that since no price can be set for a human organ, the stipulation for it to be donated after one's death, is null and void.

II. Positive resolutions

The Council of the Islamic Fiqh Academy of the Muslim World League, Makkah, at its eighth working session (1405 AH/1985), resolved that it is permissible in *Shari`ah* to remove an organ from a dead person and transplant it into a living recipient, on the condition that the donor was sane (*mukallaf*) and had wished it so.⁴⁶

The Council of the Islamic Fiqh Academy of the Organisation of Islamic Conference (OIC), during its fourth session held in Jeddah, (1988) resolved that it is permissible from the *Shari`ah* point of view to transplant an organ from the body of a dead person if it is essential to keep the beneficiary alive, or if it restores a basic function to his body, provided it has been authorized by the deceased or by his heirs after his death or with the permission of concerned authorities if the deceased has not been identified or has no heirs.⁴⁷

The above (positive) resolutions, we may safely assume, provide a valid

theoretical basis for the inclusion of organ donation in one's will. The considerations that have played a major role in influencing the adoption of these positive resolutions for the inclusion of organ donation in one's will relate to what are termed as (a) *al-Ithar* (altruism i.e. generosity towards humankind) and (b) *al-darurah* (the rule of necessity).

A. Al-ithar (altruism)

This consideration was discussed previously. Here we may add that a living person's gesture in willing to donate his/her cornea, for example, after death has taken place should be viewed as an act of altruism. After all, through corneal transplant the donor would have made a noble contribution in restoring the sight of another fellow human being suffering from corneal blindness.

B. Al-darurah (the Rule of Necessity)

Dr. Tanzil-ur-Rahman, former Chief Justice of Pakistan, is of the opinion that the inclusion of corneal donation, for example, in one's will may be held permissible on the basis of the rule of necessity. He explains that the rule of necessity is based upon the juridical principle of *al-Istihsan* (juristic preference), that the needs of the living are given preference over those of the dead.⁴⁸ Thus the inclusion of organ donation in one's will could be a positive step in resolving organ donation shortages worldwide.

III. The enforceable nature of such a will

The Islamic Fiqh Academy of India, as pointed out above, resolved that any direction cited in the will pertaining to the donation of one's organ for

transplantation would be invalid and should not be honored

Dr. Tanzil-ur-Rahman holds the view that once a person has included organ donation in his/her will, it will be valid and enforceable in Shari`ah, subject to the following conditions:⁵⁰

(i) The donation (by will) is motivated purely for human good and is without any monetary or other remuneration.

(ii) The recipient's need is genuine, of the nature of extreme and dire necessity, with no alternative treatment available, and duly certified by two Muslim medical practitioners of integrity.

(iii) The ligature (donor) leaves behind no heir. In case there is an heir, obtaining his consent, after death, shall be necessary. If any one of the heirs, there being more than one heir, does not consent to it, the will shall not be executed.

(iv) In case the will is in respect of the eyes, the eyes are to be taken out or separated from the body, after certification of death by two Muslim medical practitioners of integrity, to the extent of the need as per will, only before burial of the dead body and no insult nor unnecessary disfigurement should be done to the dead body.⁵¹

Insofar as who would have the authority to assent to a donation of a dead person's organs in the event that no such clause has been stipulated in the will of the deceased, the Council of the Islamic Fiqh Academy of the Organizations of Islamic Conference and Dr. Tanzil-ur-Rahman concur that the legal heirs could give the necessary assent for that.

Conclusion

As for transplantation of human limbs, it was pointed out that Muslim scholars differ on this issue. Following the establishment of Islamic Fiqh Academies in various parts of the Muslim world there is at present consensus that Muslims may opt for this procedure in order to improve the quality of life. The writer of this article endorses this stance for he strongly feels that organ transplantation, like blood transfusion, is a form of treatment. Hence, Muslims should avail themselves of this form of treatment as long as there is no other alternative. Moreover, consenting to donate one's kidney to either a member of one's family or a friend who is in dire need of it ought to be viewed as an act of sharing motivated by the spirit of love, compassion and sympathy for a fellow human being.

There is agreement among Muslims and the followers of other traditions that the dead human body must be treated with utmost respect. This may lead one to regard cadaveric transplantation as mutilation. However, one ought to note that justification for Muslims to derive benefit from such transplantation is governed by the Islamic juridical principle which takes into consideration the interest of man by maintaining that the right of the living supercedes that of the dead.

This brings us to the question as to whether it would be permissible for a Muslim to include organ donation in his/her last will and testament. One of the arguments put forward against the validity of such inclusion is the notion that a price cannot be set for human

organs/limbs. This consideration would be relevant if the testator were to stipulate a price for the use of his/her organ after his/her demise. As for the other objection which relates to the fact that a person may not give away that which he/she does not own, it must be pointed out that every Muslim accepts that everything belongs to Allah (SWT). However, no one can deny that every person has been given partial ownership, if not full, over whatever he/she disposes. Therefore, incorporating organ donation in one's will for the purpose of saving another life or enhancing it can in no way be termed as khiyanah fi al-amanah (breach of trust). After all, this gesture is motivated by the niyyah (intention) to assist a person in need. Thus although such a stipulation in one's last will and testament may not in effect conform to the strict dictates of the Shari'ah, the writer of this article is inclined to hold that it would at least be morally binding on the part of the heirs to execute such a direction.

References:

1. Mufti Muhammad Shafi`, Insani A`za'i ki Paivandkari - Shari`at Islamiyyah ki Roshni main. Karachi: Dar al-Isha`at, 1967, pp. 29-38.
2. Sermons of the Holy Prophet Muhammad, (Islamabad: Da`wah-o-Irshad Wing of the Islamic Research Institute. Sha`ban 1400 AH), p. 31.
3. Abd al-Qadir Awdah, Al-Tashri al-Jina'i...al-Islami Muqaranah bi al-Qanun al-Wada'i (Cairo: Dar al-Turath al-`Arabi, n.d.), vol. 2, p. 5.
4. Abu Dawud, Sulayman ibn al-As`ab al-Sijistani, Sunan Abi Dawud. Beirut: Dar Ihya' al-Sunnah al-Nabawiyyah, n.d. Kitab al-Jana'iz', hadith no. 3207, vol. 2, pp. 212 - 213.
5. Shafi`, Insani A`za'i, op. cit., p. 37.
6. Abu Dawud, Sunan Abi Dawud `Kitab al-Tarajjul', op. cit., hadith no. 4168, vol. 2, p. 77.
7. Charles Hamilton, The Hedaya, (Lahore:The Premier Book House, 1963), p. 270.
8. Al-Sukri, `Abd al-Salam, Naql wa Zira`at al-A`da' al-Adamiyyah min Manzur al-Islami ,(Nicosia: Al-Dar al-Masriyyah li al-Nashr wa al-Tawzi`, 1409 AH/1989, p. 134.
9. Abu Dawud, Sunan Abi Dawud, `Kitab al-Jana'iz', op. cit., hadith no. 3207, vol. 2, pp. 212-213.
10. See al-Sukri, Naql wa Zira`at, op. cit., p. 125.
11. Abu Dawud, Sunan Abi Dawud, Kitab al-Jana'iz, op. cit., hadith no. 3207, vol. 2, pp. 212 - 213.
12. See al-Sukri, Naql wa Zira`at, op. cit., pp. 136 - 137.
- 13) Al-Bukhari, Muhammad ibn Isma`il, Sahih al-Bukhari. Cairo: Dar al-Sha`b, n.d., Kitab al-Dhabahi wa al-Sayd, vol. 3, pp. 121-122.
14. Al-Sukri, Naql wa Zira`at, op. cit., p. 137.
- 15 For example see the arguments put forward in favour of organ transplantation by Shaykh `Abd al-Rahman al-Bassam and Shaykh Muhammad Rashid Rida Qabbani, `Zira`at al-A`da' al-Insaniyyah fi Jism al-Insan' in Majallat al-Majma` al-Fiqhi (1408 AH/1987), pp. 13 - 22 and 27 - 33.
16. Abu Zahrah, Muhammad, Usul al-Fiqh. Cairo: Dar al-Fikr al-`Arabi, n.d., pp. 299 and 301.

17. Ibn Qudamah, Muhammad `Abd Allah Ahmad Muhammad, *Al-Mughni*. Cairo: Maktabat al-Jamhuriyyah al-Arabiyyah, n.d., vol. 2, p. 551.
18. S.M. Darsh, *Islamic Health Rules*, (London: Taha Publishers, 1981), p. 3.
19. For example see Zahir, *Hiwar Ma`a Tabib Muslim*, p. 83.
20. *Sahih al-Bukhari, `Kitab al-Adab'*, vol. 3, p. 12. Zahir, Faysal Ibrahim, *Hiwar Ma`a Tabib Muslim*. Cairo: al-Risalah, n.d., p. 85.
21. Zahir, Faisal Ibrahim, *Hiwar Ma'a Tabib Muslim*. Cairo: al-Risalah, n.d., p. 85.
22. Jad al-Haqq, `Ali Jad al-Haqq, *Buhuth wa Fatawa Islamiyyah Fi Qadaya Mu`asarah*. Cairo: Al-Azhar University, 1994., vol. 3, p. 428.
23. *Ibid*, p. 429.
24. Fatwa issued to Islamic Medical Association of South Africa by Dar al-Ifta', Riyadh, Saudi Arabia, p. 14.
25. See *al-Muslimun*, a Saudi Arabian newspaper, 9 - 15 Rabi` II 1406 AH/21 - 28 December 1985, p. 85.
26. Abu `Abd Allah Muhammad ibn Yazid ibn Majah, *Sunan Ibn Majah*, (Beirut: Dar al Ihya al-Kutub al `Arabiyyah, n.d.) *Kitab al-Ruhun'*, hadith no. 4, vol. 2, p. 816.
27. Shafi`, *Insani A`za'i*, op. cit., p. 22.
28. Zahir, *Hiwar Ma`a Tabib Muslim*, op. cit., p. 87.
29. Fatwa issued to Islamic Medical Association of South Africa by Dar al-Ifta', Riyadh, Saudi Arabia, p. 15.
30. Islamic Fiqh Academy of India - Developing A Religious Law in Modern Times' in *Religion and Law Review*, p. 175.
31. *Ibid*, p. 177.
32. *Ibid*, p. 170.
33. Qarar al-Majma` al-Fiqhi' in *Majallat al-Majma` al-Fiqhi (1408 AH/1987)*, p. 40.
34. Resolutions and Recommendations of the Fourth Session of the Council of the Islamic Fiqh Academy' in *Organization of the Islamic Conference's Islamic Fiqh Academy Resolutions and Recommendations*, (Jeddah: Matabi` Sharikat Dar al-`Ilm li al-Tiba`ah wa al-Nashr, 1406 - 1409 AH/1985 - 1989, p. 52.
35. Islamic Fiqh Academy of India - Developing A Religious Law in Modern Times', *Review*, p. 178.
36. Qarar al-Majma` al-Fiqhi' in *Majallat al-Majma` al-Fiqhi (1408 AH/1987)*, p. 40.
37. Islamic Fiqh Academy of India - Developing A Religious Law in Modern Times', p. 178.
38. Resolutions and Recommendations of the Fourth Session of the Council of the Islamic Fiqh Academy' (1408 AH/1988), p. 52.
39. Qarar al-Majma` al-Fiqhi' in *Majallat al-Majma` al-Fiqhi (1408 AH/1987)*, p. 40.
40. 'Islamic Fiqh Academy of India - Developing A Religious Law in Modern Times', p. 178
41. *Sahih al-Bukhari, `Kitab al-Wasaya'*, op. cit., vol. 4, p. 2.
42. M.S. Omar, *An Introduction to the Islamic Law of Succession*, (Durban: Impress, 1982), p. 2.

43. Ali `Abd al-Rahman al-Rabi`ah, `Al-Wasiyyah' in Majallat Majma` al-Fiqhi (1409 AH/1989), p. 69.
44. Islamic Fiqh Academy of India - Developing A Religious Law in Modern Times', p. 179.
45. Tanzil-ur-Rahman. A Code of Muslim Personal Law, (Karachi: Islamic Publishers, 1980), vol. 2, p. 330.
46. See `Qarar al-Majma` al-Fiqhi' in Majallat al-Majma` al-Fiqhi (1408 AH/1987), p. 40.
47. Resolutions and Recommendations of the Fourth Session of the Council of the Islamic Fiqh Academy' (1408 AH/1988), pp. 52 - 53.
48. A Code of Muslim Personal Law, op. cit., vol. 2, p. 341.
49. Islamic Fiqh Academy of India - Developing A Religious Law in Modern Times', p. 179.
50. Tanzil-ur-Rahman. A Code of Muslim Personal Law, Karachi: Islamic Publishers, 1980, vol. 2, p. 327.
51. From a document issued by Muslim Judicial Council, Cape Town South Africa which was signed by Sheikh Nazim Mohamed (as President) and Maulana Yusuf Karaan (as Head - Fatwa Committee).