

# Islamic Perspectives on Organ Donation

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## Abstract

The UK and its devolved governments are introducing new protocols for Organ Donation that will affect all communities. This article describes the divergent opinions on post-mortem organ donation within the Muslim community. While the primary Islamic texts emphasise the sanctity of the dead body, they also emphasise the importance of preservation of life and encourage altruism. Emphasising the sanctity of the dead body, some Muslim scholars have forbidden organ donation. Others, believing altruistic preservation of life outweighs the first principle, have permitted post-mortem donation. The two main British based '*fatwas*', legal edicts, on the subject agree in principle on the permissibility of organ donation but differ on the point at which organs can be extracted. One states it is only acceptable after the heart and respiratory system stop and the other after the declaration of brain death, which is a form of death diagnosed using neurological criteria, after which organ donation is normally progressed. Although we have made progress on moving towards a consensus on the principle of organ of donation being permitted in Islam, there remains a great deal of uncertainty about whether it is acceptable within current medical procedures in the UK. Under the new legislation, Muslims may decide to donate after neurological death, to donate only after circulatory death or not donate at all. This is a personal decision.

## Fundamental principles on which the various perspectives are built

The Islamic perspectives on organ donation are built upon two principles and the way that these two principles relate to each other.

The first principle is the sanctity of the human body. The Quran states that God has favoured humankind over all creation and honoured them:

*'We have honoured the children of Adam and carried them by land and sea; We have provided good sustenance for them and favoured them specially above many of those We have created.'*

(Quran 17:70)

In his farewell, sermon, the Prophet Muhammad, upon him be peace, described the whole human being as being 'sacred'. He said: 'This is the day of the great pilgrimage. Your blood, your wealth and your honour are sacred – as sacred as this land, in this month, on this day.'<sup>1</sup>

The 'honour' and 'sacred nature' referred to in these primary sources of Islam are not limited to the human body that is alive. The sanctity is equally associated with the dead body. The Prophet Muhammad, upon him be peace, said: 'Breaking the bones of a dead person is tantamount to breaking the bones of a living person'.<sup>2</sup>

The second principle that influences Muslim perspectives of organ donation is the fact that preservation of life is one of the highest goals of Islamic law. Drawing from the same statement about the sanctity of the human 'blood', scholars have established that preservation of life is one of the fundamental principles on which the *shariah*, Islamic legal code, is based. They often refer to a verse of the Quran stating the following:

*If any saves a life it is as if he saves the lives of all mankind.*

(Quran 5:32)

As organ donation is generally understood to be a life saving procedure, the verse has been used to support the position that donating's one's organs is a blessed deed with massive reward.

Like other faiths and those who support organ donation from a non-religious perspective, the altruistic element of organ donation plays a large part in deciding to donate. The Quran explicitly praises the early believers as altruistic saying:

*They give them preference over themselves, even if they too are poor: those who are saved from their own souls' greed are truly successful.*

(The Quran 59:9)

Belief is based, according to the Prophet Muhammad, upon him be peace, on loving for others what one would want for oneself. He, upon him be peace, said: 'None of you (truly) believes until he wishes for his brother that which he wishes for himself.'<sup>3</sup>

### The evidences supporting the two divergent opinions

The first principle outlined above led many scholars, especially those writing before the technological advances of the late 20<sup>th</sup> Century, to conclude that organ donation was not permitted by Islamic law. They draw on several evidences and prophetic statements that, when taken literally, seem to imply the body cannot be harmed in any way that negates its sanctity. These include statements such as: 'Breaking the bones of the deceased is like breaking his bones when he is alive.'<sup>4</sup>

An evidence used to support the prohibition of using any part of a human body for the benefit of another person is the words of the Prophet, upon him be peace, that 'cursed is the one who uses another woman's hair (as a hair extension)'. Imâm al-Nawawi comments that 'if human hair is used, then it is unlawful by consensus, whether it's the hair of a man or woman, because of the general narrations that prohibit this. And, it is unlawful to take benefit from the hair and all other organs of a human body due to its sanctity. The hair of a human along with all his body parts must be buried'.<sup>5</sup> Rafâqat Rashîd in his '*Islamic Response to the Debate on Organ Transplant*' contextualises these statements and argues that the context limits their application.

Rashîd and others conclude that the above Prophetic traditions do not negate the basic principle of the human body being sacrosanct. Their basic premise is that organ donation, rather than *dishonouring* the deceased, *actually honours* it by allowing it to be renewed and to benefit others. This is all within the context of the second principle that 'bringing life to another is equal to bringing life to the whole of humanity'. It has already been established in *shariah*, the Islamic legal system, that when the life of an expectant mother and the foetus are both in danger, the life of the mother takes precedent as the life of the mother is certain whereas that of the child is not. Based on this, those who argue for permissibility state that the honour of the living is greater than the honour of the dead and preference should be given to saving the life of the living over any perceived harm to the deceased. They further support their argument with evidence that the Prophet, upon him be peace, allowed his followers to eat unlawful meat at a time when there was no alternative and they feared starvation. This leads to the principle of 'necessities permit the prohibited' (*al-darûrât tubîh al-mahzûrât*), a recurring statement of those who support the permissibility of organ donation.

### UK based fatwas

There have been two major scholarly judgements made in the UK. They both sanction organ donation, however there is a key difference which has clear implications for decisions about whether Muslims

in the UK are permitted to donate organs after death or to receive organs from bodies extracted using current medical practice.

The Muslim Law (Sharia) Council UK issued a *fatwa* in 1995 which permitted transplantation drawing on the discussion above. It concluded that the overriding principle drawn from this discussion is that necessities overrule prohibition *al-darûrât tubîh al-mahzûrât*. The council of scholars specifically stated that the definition of death and therefore the point at which organs can be retrieved for transplantation should be determined by the medical profession and implied acceptance of the determination of brain death as a legitimate position. This decision has been criticised from a number of angles. According to the British Islamic Medical Association, it 'did not make any reference to the vehement opposition from South East Asian Muftis' and failed to take into account the opinion of the Islamic Fiqh Academy of India'.<sup>6</sup> Rhandawa (1998) pointed out that it did not seem to have a great reach within Muslim communities in the UK showing that only 2 of 32 respondents were aware of this *fatwa*. This was despite it being quoted in journals such as the Nursing Times under the title 'Life Giving Fatwa' and the Journal of Medical Ethics. Rhandawa concluded that most people remained unsure about transplantation and were awaiting a ruling from religious institutions. They were to wait another fourteen years.

In July 2019, Mufti Mohammed Zubair Butt produced the most thorough and comprehensive statement on Transplantation and Organ Donation in Islam to date. It was hoped that an updated Islamic religious edict from a traditional UK scholar, in tune with the sensitivities of the Muslim community and experienced as a hospital chaplain, would have greater impact than the previous judgement. The timing and the quality of the *fatwa* seems to have done exactly that.

Mufti Mohammed Zubair agreed with many of the points identified in the 1995 decree but notably stated that although 'the medical profession is the proper authority to determine the signs of death, the medical profession does not enjoy the exclusive prerogative of defining death.' His conclusion was that post-mortem organ donation is not permitted simply on the grounds of determination of brain death as is common practice in the UK at the moment. He states that 'that brainstem death or even whole brain death alone are not sufficient to indicate departure of the soul' and that organ retrieval is 'not permitted' before 'terminal apnoea has resulted in irreversible hypoxic cardiac arrest and circulatory standstill. This position is contrary to the view expressed in 1995 by the Muslim Law (Shariah) Council, which endorsed brainstem death criteria.'<sup>7</sup>

### The development of thought among Muslim scholars and law makers

Discussions of transplantation are not new. They predate Islam. The *Sushruta Samhita*, an ancient Indian text written around 700 BC described the process of skin grafting which was adopted by the 16<sup>th</sup> Century Italian surgeon Gaspare Tagliacozzi.<sup>8</sup> Tooth transplantation was practised by pre-Columbian North and South Americans and refined by Arab surgeons over a thousand years ago. Albar (2012) suggests that as the Prophet, upon him be peace, replanted the eye of his Companion, Qatada ibn Nu'man at the Battle of Badr where 'it became the better of his two eyes' and that he 'replaced the arm of Muawath bin Arafah and the hand of Habib bin Yasaf', a precedent dates back to the era of the Prophet himself.<sup>9</sup> He points out that discussion of porcine bone grafts and other xenografts were discussed by the 13<sup>th</sup> Century jurist and judge Zakaria al-Qazwini.<sup>10</sup>

Blood transfusions were sanctioned by Muslim jurists in the 20<sup>th</sup> century, despite the fact that blood is considered to be *najis*, impure, showing that scholars were able to discuss medical advances in the light of traditional scholarship and within the strict confines of Islam's primary sources, the Quran and the *Sunnah*, prophetic tradition. Despite this historic legacy, it is during the latter part of the twentieth

century that the debate about transplantation intensified and as the century progressed, the focus shifted towards the definition of death.

The concept of brain death emerged in 1959 from the studies of Mollaret and Goulon<sup>11</sup> in their description of patients with irreversible coma. Their research led to the use of terms 'cerebral death syndrome' and 'electrocerebral silence' and in 1968 Harvard Medical School defined irreversible coma as brain death, stating that 'an organ, brain or other, that no longer functions and has no possibility of functioning again is for all practical purposes dead.'<sup>12</sup> Rashid, citing al-Bar and others, suggests 'There are more positive Islamic opinions on brain death now which equate brain death with cardiac death.'<sup>13</sup>

One of the earliest Muslim scholarly edicts to directly address organ donation was issued in 1959 when Shaykh Hassan Mamoon sanctioned corneal transplants from cadavers of unidentified persons and from those who agreed to donate upon their death.<sup>14</sup> In 1964, Ayatollah Khomeini decreed organ donation to be permissible and during the 1960s and 1970s there were a number of scholarly and legal decrees sanctioning the use of organs extracted after death. However, these did not explicitly discuss the developing concept of brain death.

The practice of organ retrieval from people who had suffered brain death in car accidents, and their subsequent organ transplantation progressed during this period. With an alarming rise in accidental deaths, especially in the Gulf area where it was three times higher than in western industrial countries,<sup>15</sup> the issue of maintenance of brain-dead patients on life support and the possibility of organ donation became increasingly more urgent. As a practicing organ transplant surgeon, Albar noted after the 1988 fatwa of the Islamic League Conference of Jurists that 'this decree received little publicity in the media, and cardiac and kidney transplants from brain dead individuals continued without hinderance from the jurists.'<sup>16</sup>

The relationship between scholars and medical practitioners following this resolution appears to be one where they worked in collaboration identifying issues related to the main topic. These included topics such as transplantation from nerve tissue for treating Parkinson's and other ailments and from embryos aborted spontaneously, medically or electively. However, as with the statement of the council of scholars in the UK, scholars did not determine specific definitions or enter into the technicalities of matters such as the point at which death is medically determined. Even within the medical profession, there are differences of opinion and technical matters that influence definition and determination of death.

### The key differences of opinion – the definition of death and its implication for the permissibility of organ transplantation

Religious communities have had to rethink their approach to the definition of death as science and medicine have advanced. Pope Benedict XVI described the challenge that the definition of brain death presented:

*The traditionally accepted sequence has been that after heart–lung arrest, loss of consciousness first, and then brain death occurs. In the early 1950s, the advent of mechanical ventilators allowed for the artificial prolongation of cardiac and lung function and reversed the conventionally accepted chain of events to one initiated with death of the brain followed by heart and lung arrest....Society has not had sufficient time to accept and change to a paradigm in which death does not follow the pattern of heart-beat arrest. Thus, brain death can only be blamed as being a relatively young artificial construct based on a counterintuitive concept. This does not imply that brain death is not a biological truth.<sup>17</sup>*

He concluded that:

*There is no 'right' kind of death. When meeting at a final common endpoint, death, the order in which heart, lung and brain cease to function do not define different deaths. There are, however, different forms of death and most people are more comfortable and obviously used to the traditional 'cardio-respiratory arrest' form of death.*<sup>18</sup>

The Quran and the Prophet Muhammad, upon him be peace, talk about the universality of death and describe it as when the 'spirit' leaves the body. The Prophet, upon him be peace, offers a description of the signs of death but neither of the two sources of Islam clearly define the moment of death. Khan, al-Mousawi *et al*, after examining the various explanations of death from an Islamic perspective, conclude 'there is neither a precise definition of death nor a precise description of how to recognise the departure of *al-ruh* (the spirit) from *al Mawât* (corpse) in either the Qu'ran or the Sunnah'.<sup>19</sup>

The Prophet, upon him be peace, recognised the role of specialists and those with specific technical knowledge in a well-known event related in the most authentic collection of prophetic narrations. The Arabs of the oasis town of Madina used to use a particular method of pollination to increase the yield of their palm trees in process known as *ta'bir*, fecundation. This procedure was unknown to the Arabs of Makkah who had migrated there with the Prophet Muhammad, upon him be peace. When the Prophet, upon him be peace, heard what they were doing he commented: 'I do not think that will benefit them at all'<sup>20</sup>. When the Madinans heard of this, they stopped doing it. This reached the Prophet, upon him be peace, and he clarified the matter by saying: 'if that benefits them then let them do it. I only expressed my (personal) thought. So do not hold me about my supposition (in this worldly matter). However, whenever I relate something from Allah take it for I (can) never lie about what is from Allah.' In another narration he added, 'you are more knowledgeable in your worldly affairs.'<sup>21</sup> Those arguing in favour of defining death as circulatory death reject this interpretation arguing that the point of death is not one of 'the worldly affairs' but an essential part of the religion.

The influence of the medical profession, the scholars and public opinion will impact upon the very personal decision of whether or not to donate one's organs or whether to allow one's loved one's organs to be used after their death.

The choices facing Muslims as a result of the debate and changes in the law are three. It is a personal choice with all three positions supported by scholarly opinion. Muslims may chose to:

1. Donate their organs after neurological death
2. Donate their organs only after circulatory death
3. Not donate their organs

Currently around two thirds of deceased donors in Scotland donate following brainstem death, with the rest proceeding only after circulatory death. Both types of donation bring massive benefit to those awaiting transplantation and their families and loved ones.

## Conclusion

Mufti Zubair Butt recalls in the introduction to his *fatwa* that twenty years ago, he remembers the fatwa department where he was training issued what he described as a 'stock answer' to a question about organ donation stating that 'there is a difference of opinion amongst Muslim scholars and the questioner was permitted to adopt the opinion he or she wished.' We have moved on and there is greater consensus about the permissibility of organ donation. The debate is now better understood and arguments for the different positions are clearer. There remains a difference of opinion among Muslim scholars about the definition of death and as a result and at what point organ retrieval and donation is permitted. Donation remains a personal choice and for many of us, we will still have to

choose between opposing Islamic legal opinions, agree with loved ones and decide if we are willing to donate, whether or not we are willing to donate following brainstem death or if we only wish to donate following circulatory death.

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<sup>1</sup> Ibn Majah, Book 25, Hadith 3174.

<sup>2</sup> Abu Dawud, Book of the Funerals (Book 21), hadith number 119.

<sup>3</sup> Related by al-Bukhari and Muslim, translation cited from *Forty Hadith* of Imam al-Nawawi, Cambridge 1976 p56.

<sup>4</sup> Related by Ibn Majah and Abu Dawud, cited from Ibn Majah *The Book of Funerals*, hadith number 1685.

<sup>5</sup> Al-Nawawi, Commentary on Sahih Muslim Beirut: Dar al-Qalam, Vol 13-14 p350.

<sup>6</sup> The British Islamic Medical Association *Working paper of The British Islamic Medical Association - An Islamic View on Organ Donation*, November 2017 p5.

<sup>7</sup> Butt, Mufti Mohammed Zubair, *Organ Donation and Transplantation in Islam* published on the NHS Blood and Transplantation p 103.

<sup>8</sup> Bollinger R et al, Historical aspects of transplantation in Sabiston D (Ed.), *Textbook of Surgery*, (13<sup>th</sup> Edition), p370-380.

<sup>9</sup> Albar M. Organ Transplantation: A Sunni Islamic Perspective, Saudi Journal of Kidney Disease Transplantation 2012, 23, p818

<sup>10</sup> Ibid.

<sup>11</sup> Mollaret P, Goulon M. The depassed coma (preliminary memoir) [in French]. Rev Neurol (Paris). 1959; 101:3-15 cited from Millar et al, *Brain Death and Islam: The Interface of Religion, Culture, History, Law, and Modern Medicine*

<sup>12</sup> Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death. A definition of irreversible coma. JAMA. 1968;205(6):337-340.

<sup>13</sup> Rafaqat Rashid, 'Islamic Response to the Debate on Organ Transplant', 2020, p 35

<sup>14</sup> Dar al-Ifta al-Misriyyah, al-Fatwa al-Islamiyah, Cairo: The Supreme Islamic Council, Ministry of Endowment, Fatwa of Shaykh Hassan Maamoon, fatwa number 1065, 1959 cited from 1982 edition 7:2552.

<sup>15</sup> Grundmann Johannes, *Sharia'ah, Brain Death and Organ Transplantation: The Context and Effect of Two Islamic Legal Decisions in the Near and Middle East* in The American Journal of Islamic Social Sciences 22:4 p2.

<sup>16</sup> Albar M. Organ Transplantation: A Sunni Islamic Perspective, Saudi Journal of Kidney Disease Transplantation 2012, 23, p821.

<sup>17</sup> Estol CJ. *To live and let die: a brain death symposium* at the Pontifical Academy of Science. Int J Stroke. 2007;2(3):227-229 cited from Millar A.C., Ziad-Millar J.D. and Elamin M.E. *Brain Death and Islam: The Interface of Religion, Culture, History, Law, and Modern Medicine* in Chest, The Official Publication of the American College of Chest Physicians, Oct; 146(4): 1092–1101, 2014.

<sup>18</sup> Ibid.

<sup>19</sup> al-Mousawi M, Hamed T, al-Matouk H. *Views of Muslim scholars on Organ Donation and Brain Death*. Transplant Proc.; 29(8):3217, 1997 and Khan FA. *The definition of death in Islam: can brain death be used as criteria of death in Islam?* Journal of Islamic Medical Association 18(1):18-21, 1986.

<sup>20</sup> Related by Muslim in his *Sahih*, Book of Virtues (number 43), Chapter on the obligation to obey what he says with regard to worldly matters (number 38), *hadith* number 2362.

<sup>21</sup> Ibid, hadith number 2363.