Organ Donation and Transplantation in Islam

An opinion

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FOREWORD

So here I am, more than six years after being asked by NHS Blood and Transplant to lead the Transplantation in Islam project, writing the foreword for a ruling on all the main forms of donation written by Mufti Mohammed Zubair Butt. This initiative has been a long journey, but one I felt compelled to take, having had my own personal journey with kidney failure spanning several decades.

To understand why, as a Muslim, I wanted to engage with Islamic scholars, imams, Muslim chaplains, Muslim umbrella organisations and charities on this subject, you need to know a bit more about my personal story.

I was diagnosed with Chronic Renal Failure a week after my 20th birthday in October 1987 and spent more than 23 and a half years on dialysis. In that time, I had two failed transplants attempts and this left me with antibodies to cells from those transplants – so it was much more difficult to find a suitable match in the future. I now have a working kidney, thanks to my nephew who donated one of his as a living kidney donor in May 2011. But the long wait has had a serious impact on my overall health and well-being.

One of the reasons for my long wait was because of a shortage of organ donors from my own ethnic community. Black, Asian and minority ethnic patients are over-represented on the transplant waiting list, due to an increased prevalence of conditions such as diabetes in South Asian people and higher rates of high blood pressure in African or Caribbean people. These conditions, if left untreated, can lead to the need for an organ transplant.

The best chance for a successful transplant is to have a donor with a matching ethnicity. This is a problem for black, Asian and minority ethnic communities generally, as we just don’t donate in large enough numbers to meet the transplant needs of these groups in the UK. Whilst increasing, the numbers are still woefully low. The result is average longer waits for a kidney transplant compared to white patients and too many people dying waiting for a transplant.

It’s a particular problem for British Muslims though, as most are of South Asian heritage, so rely on each other as potential donors - but there’s a real reluctance to donate. Recent research, done for the NHS, shows many British Muslims do not believe that organ donation is in line with their faith. Religious and cultural factors continue to play a significant role in deterring members of our diverse Muslim communities living in the UK from exploring the humanitarian and social benefits of organ donation.

After my own long wait for a transplant I decided to do everything I could to encourage more Muslims to donate. There have been Islamic rulings (fatwa) on organ donation in the past in the UK and Europe – the 1995 fatwa by the Muslim Law (Shariah) Council and the 2000 fatwa by the European Council for Fatwa and Research. Despite these rulings, many Islamic scholars and imams in the UK remain divided on the issue and some refrain from giving an opinion. This difference of opinion among religious leaders coupled with a failure to communicate developments in this area has been one of the major barriers.
In my mind, to have any chance of changing attitudes and action around organ donation among British Muslims, guidance needed to come from respected and suitably experienced independent Islamic scholars, and most crucially for the majority of Muslims in the UK, South Asian Islamic scholars with an expertise in Islam and medical ethics.

The seeds of my work started in 2013. Professor Gurch Randhawa from the University of Bedfordshire published the Faith Engagement and Organ Donation Action Plan, following a multi-faith summit in the UK. This plan set out a number of recommendations to help break down barriers relating to faith and organ donation, one of which was to gather together UK based Islamic scholars and key Muslim stakeholder groups with the intention of developing an updated fatwa in support of organ donation.

So that’s what I did. It started with an Insight Workshop with a diverse group of Islamic scholars, imams, Muslim chaplains, Muslim umbrella groups and community stakeholders to understand the challenge and agree a way forward. But little did I know when I started with that first gathering in Sept 2013 what a complex journey it would be. There have been delays along the way, mainly due to my own deteriorating health.

Over the years, we have gathered together many groups of key Muslim influencers and stakeholders and this was essential. The purpose was to investigate the current understanding and position of recognised UK based Islamic scholars regarding transplantation and organ donation; review the barriers and enablers that affect the decision to become an organ donor, and finally to review the barriers and enablers to patients making an informed decision to be added to the waiting list for transplantation.

Some Islamic scholars, imams, chaplains, community leads and organisations felt from the beginning, or decided very quickly, that organ donation was in line with Islam. For others it has been a longer process. Some are still on a journey of investigation.

Working with NHS Blood and Transplant, over the years, we have held many workshops, gatherings, information sessions, outreach and educational seminars on organ donation and transplantation in Islam, with the support of Specialist Nurses & Clinical Leads in Organ Donation and Transplant Surgeons.

In 2015 we held an Islamic Scholars Workshop to review the current Islamic position in the UK and to formulate a work-plan for the development of an updated Islamic religious edict (fatwa) for organ donation and transplantation.

In July 2017 we hosted an Insight Workshop with Muslim sisters’ groups. In early 2018 we invited Welsh imams to an information and discussion session in Wales, where the organ donation law changed in 2015 to one of deemed or presumed consent, highlighting the issue of donation for Muslim communities in Wales.

Then in July 2018 we organised an Islamic Scholars Conference. We brought together key British Islamic scholars, with NHS specialist clinical intensivists and transplant surgeons to discuss the process of ‘diagnosing death using neurological criteria’ and the organ retrieval and transplantation process.
It was soon after this conference that Mufti Mohammed Zubair Butt decided that the time was right for him to write a ruling on organ donation and transplantation, and I am delighted that he did. His ruling is vitally important. There is a particular sense of urgency, because of a planned change to the organ donation law in England, Scotland, the Channel Islands and Isle of Man, to one of deemed or presumed consent, similar to the system in Wales, which came into force in 2015. Some clear religious guidance was necessary before then. For many British Muslims, how their faith sits with the principle of organ donation is going to be key to the decision that they make.

Having spoken to Mufti Mohammed Zubair Butt a great deal over the last six months, it is very clear to me, how much research has gone into his work before reaching his personal position. He has conducted this piece of work on an independent basis and has sought feedback from a select group of Islamic scholars across the UK. This gives me the reassurance that, whilst we don’t have a broad panel of Islamic scholars, there is sufficient independent scrutiny of his work by authoritative and learned individuals.

I will leave you with one final question, which I urge you to consider. If you or a member of your family needed an organ transplant, would you take one? If so, shouldn’t you be prepared to help others?

I, for one, don’t want anyone of any background to go through the journey I’ve been through with kidney failure. It’s that aspiration that’s guided and driven me over the last six years. Quite simply, without organ donors there can be no organ transplantation. So, for me, it is my sincere hope that this updated fatwa will help British Muslims make an informed decision about becoming an organ donor, and to also consider other forms of donation such as blood and stem cell donation. Whatever you decide, it is important to tell your family and friends so they can support your decision.

Amjid Ali
Partner and Project Lead, Transplantation in Islam
NHS Blood and Transplant
ACKNOWLEDGEMENT

First and foremost, praises and thanks to the Almighty, for His showers of mercy and blessings throughout my life and endeavours.

I would like to express my gratitude and thanks to Mufti Mohammed Zubair Butt for his commitment, dedication and unwavering support. He has worked tirelessly, for the last 5 months to produce this very comprehensive document providing much needed clarity and reassurance on the issue of Organ Donation and Transplantation in Islam from the Hanafi school perspective.

I am grateful to all our Muslim community stakeholders who have given up so much of their valuable time to attend our insight sessions to share their knowledge and lived experiences. These sessions have played a key role in how we have developed our on ongoing programme of community engagement.

My sincere thanks also go to all my colleagues at NHS Blood and Transplant and the wider organ donation and transplant community who have supported this initiative. Their support in convening and facilitating discussions with a diverse group of Muslim community stakeholders has been instrumental to increasing transparency, understanding, awareness and engagement.

Last but not the least, I cannot express my gratitude and thanks to my family in particular my wife and daughter for their love, understanding and support. All the unsung heroes in the NHS who have cared for me as a kidney patient. And, my nephew, who stepped forward to donate one of his kidneys to me as a living donor. His altruistic donation “gift of life” has not only improved the quality of my life but the life of my family.

Amjid Ali
Partner and Project Lead, Transplantation in Islam
NHS Blood and Transplant
ACKNOWLEDGEMENTS

ALL praise is due to Allah, Lord of the Worlds, and blessings and peace be upon the Master of the Prophets and Apostles, and upon his family, and all his companions.

I would like to express my sincere gratitude to a whole host of people who have, in one way or another, contributed to the production of this fatwa. I begin with my parents, who nurtured me and with whose sacrifice and prayers I was able to study the Islamic sciences; all my teachers, who taught me diligently and who, to this day, continue to keep me in their thoughts and prayers; and my family, who have graciously allowed me the time and space to produce this fatwa and with whose continued support I cannot do without.

I would also like to express my sincere gratitude to all of those individuals who have kindly agreed to review my fatwa, discussed points of the fatwa with me in person, or have provided me with valuable written feedback. Some of these individuals prefer to remain anonymous, whilst the following individuals have agreed for me to mention their names: Dr Aasim I. Padela MD MSc, Dr Mufti Abdurrahman Mangera and the post grad students at the Whitethread Institute, Mufti Amjad M Mohammed BSc (Hons) BMAIS PGCE PGDipRes PGCHEP FHEA MPhil NPQH, Shaykh Dr Asim Yusuf, Mufti Faraz Adam, Maulana Dr Mansur Ali and Dr Rafaqat Rashid. It should be noted, however, that this does not necessarily mean that the individuals mentioned here agree entirely with all or any of what I have opined. Equally, I have not accepted all of their suggestions or acted upon all of their feedback.

I am also greatly indebted to Dr Dale Gardiner, who very kindly shared his works and insight with me, and used his knowledge and experience to suggest important resource materials, even before I had any intention of putting a fatwa together.8

Lastly, I would like express my gratitude to Amjid Ali, whose demeanor and evident sincerity was constant encouragement in taking on and carrying through the task of putting this fatwa together.

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3 Nur al-Habib Foundation, Fellow of the Royal College of Psychiatrists.
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5 Lecturer in Islamic Studies, Cardiff University.
6 Academic Director, Al Balagh Academy.
7 National Clinical Lead for Organ Donation, NHS Blood and Transplant.
8 Dr Dale Gardiner is a Consultant in Adult Intensive Care Medicine with an interest in ethics, the diagnosis of death and organ donation and, at the time of sharing his works and insight with me, had not been appointed by NHS Blood and Transplant as the National Clinical Lead for Organ Donation.
Introduction and Executive Summary:

The very first time I was introduced to a discussion on the Islamic position on organ transplantation was around twenty-two years ago during my postgraduate training in the issuance of Islamic edicts. The fatwa department received a written question about the permissibility of organ transplantation to which the stock answer offered was that, there is a difference of opinion amongst Muslim scholars and the questioner was permitted to adopt the opinion he/she wished. This was not an entirely satisfactory answer for me, but it is the answer with which I have lived for twenty-two years. In March 2000, I attended the “Organ donation and transplantation: The multifaith perspective” conference held in Bradford as a newly appointed chaplain at the Leeds Teaching Hospitals NHS Trust. Prior to attending the conference, I equipped myself with some study of the ethico-legal discussions of Muslim scholars on organ transplantation. The conference served as a catalyst for me to study the topic with renewed vigour and in greater detail, and soon I was delivering presentations to fellow chaplains, 2nd year medical students, health professionals, and Muslim scholars. For well over a decade now, I have been part of the Chaplaincy Certificate programme at the Markfield Institute of Higher Education, presenting the arguments for and against organ transplantation in Islam. I have done the same for the last seven years on the Diploma in Contextual Islamic Studies & Leadership at the Cambridge Muslim College. Over the years, I have been also been involved in a number of initiatives to come to some kind of collective position amongst Muslim scholars in the UK, but these have tended to peter out after a little while. Despite all my work in this area, I have never once written a formal opinion, but simply relied on the stock answer I learned during my postgraduate training. Meanwhile, my years of study identified key areas that, to my mind, needed clarity before I could settle on a definitive opinion. This paper is an attempt to bring clarity to those issues, primarily for myself, and constitutes my current tentative opinion on the issue. What was originally envisioned to be a three-week piece of work has morphed into six months of dedication. It is quite possible that, for others, there are still issues that remain outstanding, but this is the sum of my personal journey.

For about the last two years, I have been involved with the work of NHSBT through Amjid Ali, who repeatedly expressed the need for an updated fatwa that addressed the concerns he was encountering from pockets within the Muslim community. With the change in the spring of 2020 to deemed consent, I concluded that I could delay no longer and I accepted the responsibility of penning a fatwa that addressed the issues that lingered for me. Amjid Ali provided me with a brief, which included a review of both the 1995 fatwa of The Muslim Law (Shariah) Council and the 2000 fatwa of the European Council for Fatwa and Research, and a personal opinion drawing on the four Sunnī schools of jurisprudence.

1995 fatwa of The Muslim Law (Shariah) Council

The 1995 fatwa of The Muslim Law (Shariah) Council was, despite a claim to the contrary, an opinion by a relative small network of individuals and did not include any obvious representation from the Deobandi School. The basic position of the fatwa was that organ

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As an adherent of a Sunnī school, I would not, as a matter of course, refer to the Shiite schools of law, as the methodology and evidence sources of the Shiite schools differ from the Sunnī schools.
transplantation is permissible, and brain-stem death is a proper definition of death. The fatwa used the following premises for its opinion:

1. Personal legal authority/sovereignty. I have argued that the life and body of the individual combines both a right of the individual and a right of God [in terms of public interest over which no one individual has an exclusive claim]. The individual enjoys the right of disposal until such disposal conflicts with the right of God, in which case, the right of God is preponderate. As long as public interest is served and the benefits to the recipient outweigh the harms to the donor, organ transplantation cannot be deemed to be impermissible on account of a lack of self-ownership.

2. A person is forbidden from harming himself or others. I concur with this premise, which is sound and not a matter of dispute.

3. Necessity permits the prohibited. I concur with this premise, which I have demonstrated in the course of my own opinion.

4. Choosing the lesser of two evils. I concur with this premise, which I have demonstrated in the course of my own opinion.

5. Islam made it an obligation upon the sick to seek treatment. I have argued that this is simply not true. The majority opinion across all four Sunnī schools of jurisprudence hovers around simple permissibility and preferability and is based upon treatment efficacy. Treatment can be mandatory only when the treatment efficacy is certain or a dominant presumption, and the probability of failure is disregarded. This is not the case for organ transplantation.

The fatwa focused more on arguing brain stem death was an acceptable criterion of death but did not acknowledge whole brain or higher brain criteria. There was also no discussion as to what philosophical definition of death brain stem death satisfied, or whether human dignity was compromised by the process of organ retrieval.

The press release for the fatwa identified the medical profession to be the proper authority to define the signs of death and accepted brain stem death as constituting the end of life for the purpose of organ transplant. Whilst I concur that 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. For Muslims, death is defined by the Islamic philosophical tradition. Brain stem death is a criterion for determining death and not a philosophical definition of death. Death is a philosophical or moral question and not a medical or scientific one.

2000 Fatwa of European Council for Fatwa and Research:

The European Council for Fatwa and Research (ECFR), based in Dublin, Ireland, is an initiative of the Federation of Islamic Organisations in Europe (FIOE) with the stated aim of bringing together European Muslim scholars to unify their positions on jurisprudential issues with a particular focus on the European context. Recent developments have brought a more distinctly European face to the ECFR, but in the UK, the ECFR enjoys little traction amongst the Deobandi and Barelwi schools, which account for about 64.9% of the mosques and have their own ad hoc structures for arriving at legal opinions. Notwithstanding, the ECFR does represent a credible academic voice that is of interest to scholars not affiliated to the ECFR, even if the decisions of the ECFR are not quite met with ready acceptance.
In 2000, the ECFR declared its ratification of the resolutions of both the Islamic Fiqh Academy (IFA) of the Muslim World League and the International Islamic Fiqh Academy (IIFA) of the OIC simply quoting verbatim three resolutions of the IIFA. Resolution No. 26 (1/4) on “Organ transplant from the body (dead or alive) of a human being on to the body of another human being” permitted organ transplantation with conditions and was passed by majority, but it remains unclear as to how the proposed resolution was first formulated and how the dissenting voices were satisfied. In relation to Deceased transplantation the resolution noted that death comprised two situations:

1. Death of the brain with the complete cessation of all of its functions in which, medically, there is no reversibility.
2. Complete cessation of cardio respiratory functions in which, medically, there is no reversibility.

In the first situation, two requirements needed to be met: firstly, the complete cessation of all brain functions [and not just of the brain stem] and, secondly, medical irreversibility [and not simply permanence]. The second situation also had two requirements: firstly, the complete cessation of cardio respiratory functions and, secondly, medical irreversibility [and not simply permanence]. Consideration was also given to the resolution of the academy in its third session, but there are, however, material as well as nuanced differences between the two resolutions in relation to particularly how brain death is determined. The latter resolution on organ transplantation required medical irreversibility to determine death whilst the earlier resolution on brain death also required the onset of decomposition. It is also unclear from the written record of the submissions and discussions of the IIFA concerning the removal of resuscitation equipment as to why the medical doctors were unanimous in their support for brain stem death, yet the resolution stipulated all brain function. Both resolutions thus, by implication, rule out death if there is residual brain function whilst the stipulation of autolysis in the earlier of the two resolutions is a further confounder for organ retrieval protocols.

Resolution No. 57 (8/6) concerning “Transplant of Genital Organs” prohibited the transplantation of the testicles and the ovaries but allowed transplantation of reproductive organs that did not transfer hereditary attributes but excluding the genitals.

Resolution No. 54 (5/6) concerning “Transplant of Brain Tissues and Nervous System” permitted, in principle, autotransplantation of tissues from the adrenal gland and transplantation of brain tissue from an animal foetus but prohibited the same from a living human foetus or a baby born with anencephaly. However, it permitted the same from a natural miscarriage, an abortion sanctioned in Islam or from brain cells cultured in a laboratory.

The ECFR opinion concluded with three additional points:

1. Directed donation – Whilst live directed donation is the norm, deceased organ donation must, in principle, be unconditional under current legislation across the UK. However, a request for the allocation of a donor organ to a close family relative or friend can be considered. There is a valid discussion to be had as to whether Islam favours a personal autonomy model of distributary justice, an obligation model, or a combination of both. However, I feel that this discussion is beyond the scope of this paper.
2. A written instruction to donate posthumously will be governed by the laws on bequests and the heirs or other third parties could not alter the bequest. - However, I have argued that an instruction, whether verbal or written, to donate body parts
posthumously does not meet the legal requirement of a valid bequest in any of the four Sunnī schools of jurisprudence, all of which require ownership, licitness and admission to proprietary transfer. The life and body of the individual combines both a right of the individual and a right of God, and the individual enjoys the right of disposal until such disposal conflicts with the right of God. If the right of God is preponderate, that right cannot be waived, compensated for nor inherited. If the right of the individual is preponderate, such as in the right of requital, the individual may waive the right, accept compensation in the form of bloodwit, and the right can also be inherited. However, it cannot be made the object of bequest, as there is no ownership, and it does not admit to proprietary transfer. At best, it may be considered a bequest in the lexical sense only, and is rather a ceding of the donor’s right to posthumous bodily integrity for the benefit of the recipient in a manner that it is also aligned with public interest. Although the heirs are not bound by such instruction, they cannot also prevent such instruction being carried out. It also follows that, as the right of God is preponderate in human bodily integrity, such right cannot be inherited by the heirs. Thus, in the absence of any living instruction by the deceased, the heirs cannot consent to organ donation as surrogates of the deceased.

3. In any jurisdiction in which the law of deemed consent applies, the absence of an expression not to donate is implied consent. I concur with the opinion expressed by the ECFR subject to such law being widely known.

Organ transplantation in Islam

The following discussion represents my current opinion on the use of prostheses, xenotransplantation, auto transplantation and homotransplantation.

Prosthesis

The use of prostheses, per se, is permissible across all schools as an example of what has been subjugated to humans for them to benefit. Permissibility can also be deduced from specific events from the era of the Prophet (peace and blessings of Allah be upon him) when he advised the use a gold nose to replace a silver nose. This is also evidence that, at a time of need, prosthesis from an otherwise unlawful source is permitted.

Xenotransplantation

The transplant of animal organs and tissue that are pure is permitted as another example of what has been subjugated to humans for them to benefit in a variety of ways, and is included in the general exhortation to take up lawful medical treatment. Impure organs and tissue, with teeth and bones being the oft-repeated but not exclusive examples, are not permissible to use, unless there is no permissible alternative.

Autotransplantation

Classical jurists have opined on replant in relation to particularly teeth, and the majority opinion across all four schools is that, in principle, replant to the original site is permissible. The primary consideration of the jurists is the purity of the excised body part, whilst jurists of the Ḥanafī School also mention the absence of a compromise of human dignity. Both premises, arguably, also maintain in autotransplantation wherein there is only a change in
site. In fact, the body part forms a more vital function than when in its original site. e.g., transplant of a blood vessel from the arm or leg in a coronary bypass. This position also upholds the fundamental goal of the protection of life; is supported by the legal maxim: *al-darar yuzāl* – the harm is to be removed; the pursuit of optimal benefit to the individual; and *a fortiori* analogy with the permission to excise a gangrenous limb, as the transplanted organ or tissue is retained in the case of autotransplantation.

**Homotransplantation**

Classical jurists have, on the whole held homotransplantation, albeit in primitive forms, to be normatively impermissible. Frequent examples are hair extensions, human bone as a splint or a graft, skin and nails. The reasons cited are human dignity; impurity of the excised body part; the Ḥadīths prohibiting the breaking of the bone of a dead person and the use of human hair extensions; and deception. These reasons are amongst the critical points of debate to determine the permissibility or otherwise in Islam of homotransplantation.

**Human dignity**

Human dignity in Islam is recognised for all humans as an expression of God’s favour and grace. It is the absolute natural right of every individual regardless of gender, colour, race or faith, and is established from the explicit, alluded and inferred meanings of the evidentiary texts. It is, however, inherently subjective as the evidentiary texts do not define its precise parameters, and thus allow the social norms of people of sound nature to play a significant role. Rulings based on social norms are, however, fluid and liable to change with a change in the norm. Thus, jurists who cited human dignity as a reason to prohibit the use of body parts did so, arguably, on the basis of the norms of their times. Today, however, organ transplantation is viewed in a totally different light, and rather than a violation of human dignity, it is seen as the ultimate gift. Furthermore, a study of Islamic law manuals reveals that human dignity does also admit to a degree of permeability in the event of competing rights, benefits and harms. This is evidenced in the cases of the permissibility of the removal of a live neonate from a dead mother after dissecting the mother’s abdomen according to the majority opinion; the retrieval of ingested property within a dead body according to a large number of jurists across all schools; survival anthropophagy in certain circumstances according to jurists of particularly the Shāfiʿī School and, to a lesser extent, the Ḥanbalī School and also Ibn ʿAbd al-Salām and Ibn al-ʿArabī of the Mālikī School, particularly so when the life of the third party is not protected in law; and the right of equal retribution according to all four schools.

**Impurity of the excised body part**

The impurity of an excised body part is another reason cited to prohibit the use of human body parts. However, firstly, the majority opinion is that the excised body part is actually pure. Secondly, even in the Ḥanafī School, the use of an impure substance for therapeutic purposes is permissible in cases of extremis according to many notable jurists of the school.

**Ḥadīths prohibiting the breaking of the bone of a dead person**

It is argued that this provides that respect for human dignity applies equally to both the living and the dead. It is prohibited to break the bone or excise the body part of a live person, except where this has been permitted by the law. Equally, it is prohibited to do the same for a
dead person. However, the background to this Ḥadīth makes it clear that this relates to deliberate denigration of the human body, whereas there is no such intention in human organ retrieval. Furthermore, the harm in the violation of human bodily integrity in human organ retrieval and transplantation is, arguably, less than the harm in loss of life or bodily function of the potential recipient.

**Ḥadīths prohibiting the use of [human/non-human] hair extensions**

Ḥadīths prohibiting the use of hair extensions are cited to prohibit the use of human body parts, even when there is no disrespect in the process of retrieval. However, jurists have differed in their approach to this reported prohibition of hair extensions. Jurists of the Ḥanafī School prohibit human hair citing the obvious meaning of the Ḥadīth text; human dignity; and deception, but allow the use of hair extensions and braids using animal or artificial hair, as this is a form of permissible adornment. Imām Mālik and a number of jurists of the Mālikī School prohibit anything that is intended to resemble hair, whether animal or artificial, citing the generality of the Ḥadīth texts. Other Mālikī jurists limit the prohibition to hair and cite deception and change in creation. The Shāfīʿī School also, unanimously, prohibits the use of human hair citing the generality of the Ḥadīth text and human dignity. Impure non-human hair is also prohibited on account of the generality of the Ḥadīth text and impurity. Pure non-human hair is prohibited for a spinster, according to the correct opinion in the school, and permitted for a married woman with the permission of her husband according to the more correct opinion in the school. Deception of a prospective suitor or a husband is another cited reason for prohibition. The correct position in the Ḥanbalī School human is prohibition, but some in the school interpret the Ḥadīths to provide reprehensibility. A further opinion is that it is permissible with the permission of the husband. The use of animal hair is also prohibited according to the correct position in the school. However, here too, a number of jurists in the school have described it as permissible but reprehensible. The use of non-hair extensions is also reprehensible on account of the generality of the Ḥadīth text.

A study of the various Ḥadīths related to the prohibition of hair extensions reveals that there are (1) Ḥadīths that do not mention a context nor allude to a ratio legis; (2) Ḥadīths that mention the context of a young newlywed whose hair had fallen out due to illness; and (3) Ḥadīths that allude to a ratio legis of deception. Ḥadīths reporting prohibition despite knowledge of the husband can be explained as maintaining a firm stance to discourage the practice so that prospective suitors would not be deceived. A fourth category of Ḥadīths is cited by jurists who prefix them with mention of the woman who joins and the woman who asks to join, but there is no actual reference to them in these Ḥadīths. Thus, deception remains the _prima facie ratio legis_ for the prohibition, which is not at all relevant to organ transplantation. At most, it may be said that [human/any form of] hair extensions are prohibited as they are specifically identified by the Ḥadīth text and, even when there is no deception, the prohibition of hair extensions remains. Additionally, hair extensions are an embellishment, whereas the transplant of human organs is to save life or restore vital bodily function.

**Mutilation - _muthla_**

The prohibition of mutilation – _muthla_ is another reason cited to prohibit the use of human body parts. However, _muthla_ is a measure in which the underlying intent is punitive, and which, according to the majority, is normatively prohibited, but allowed in the interest of achieving a higher objective, such as victory in warfare, in the pursuit of the right of requital,
or the interest of parity, such as retaliation in kind. However, there is no punitive intent in organ transplantation. On the contrary, altruism and beneficence are the underlying motives and, in light of the legal maxim: *al-unmūr bi maqāṣidihā* – the actions are [judged] by their purposes, organ transplantation should, arguably, be judged according to the underlying intent and should thus be deemed an altruistic deed rather than *muthla*. This is also supported by the distinction drawn by some jurists between requital and *muthla* with *muthla* being that which is initial without being penal. Even if punitive intent is not afforded due regard, the greater of the two harms is given consideration by committing the lesser of the two. The harm in the violation of human bodily integrity in human organ procurement and transplantation is, arguably, less than the harm in loss of life or bodily function of the potential recipient.

**Changing the creation of God – taghyīr li khalq Allah**

Another reason cited to prohibit the procurement of human body parts is that it involves changing the creation of God, the prohibition of which is founded in Verse 4:119 of the Holy Qur’ān and a number of sound Ḥadīths. However, the reference to the creation of God in Verse 4:119 is interpreted severally as castration of animals; the religion of God; the primordial nature upon which each human is born; the lawful to the unlawful [and vice versa]; and tattooing, with the religion of God being preponderate according to al-Ṭabarī. The majority opinion in relation to animal castration is that beneficial castration of animals is permitted. The use of a branding iron; ear piercing for females; and cauterisation for therapeutic reasons are also permitted. Circumcision is also an exception.

The prohibition of altering the creation of God is also adduced from the sound Ḥadīths in which the female tattooists, the women who get tattooed, the women who remove facial hair, the women who have facial hair removed, and the women who make spaces between the teeth for beauty are cursed. The Ḥadīths conclude with the phrase “the changers of the creation of Allah” or similar. Firstly, the sum of the deliberations of Ḥadīth commentators is that, if [the final or all three of] these practices are not in pursuit of vain and frivolous aims but rather for valid reasons of need, they are then permitted. Secondly, whilst some commentators opine that, “the changers of the creation of Allah” is an essential attribute for all three practices; other commentators associate it with only the practice of making spaces between the teeth. Al-Ṭabarī, Ibn al-Mulaqqin and others adopt a very literal interpretation and prohibit any change in the pursuit of beauty to what the woman is born with, which extends to the removal of a beard, moustache and hair under the bottom lip, whether through shaving or cutting. Al-Qāḍī ʿIyāḍ concludes from al-Ṭabarī’s position that, if one is born with an extra finger or limb, it cannot be excised unless the extra finger or tooth is a cause of suffering and pain, and this finds favour in the Mālikī, Shāfiʿī and Ḥanbalī schools. Al-Ṭabarī does not, however, enjoy similar support in relation to his position on the removal of abnormal facial hair. The Ḥanafī School regards the removal of a beard, moustache and hair under the bottom lip, whether through shaving or cutting. Al-Qāḍī ʿIyāḍ concludes from al-Ṭabarī’s position that, if one is born with an extra finger or limb, it cannot be excised unless the extra finger or tooth is a cause of suffering and pain, and this finds favour in the Mālikī, Shāfiʿī and Ḥanbalī schools. Al-Ṭabarī does not, however, enjoy similar support in relation to his position on the removal of abnormal facial hair. The Ḥanafī School regards the removal of a beard, moustache and hair under the bottom lip for women to be preferable. The relied upon opinion in the Mālikī School is that the removal of such facial hair is mandatory and to fail to do so is *muthla*. The Shāfiʿī School regards its removal to be preferable, whilst the Ḥanbalī School regards the shaving of it to be permissible but not plucking on account of the obvious meaning of the Ḥadīth.

The discussion above helps to inform the conclusion that the prohibition of changing the creation of God is qualified. Accordingly, some changes, such as male circumcision, removal of pubic hair and clipping of the nails are mandatory. Cosmetic changes that do not
endure are permitted. The safe correction of abnormalities that cause physical suffering and pain is permitted in all schools, and permitted in the Ḥanafī School even without physical suffering and pain. Enduring changes from the original norm, such as tattooing and filing the teeth, are prohibited unless the change is for therapeutic reasons such as cauterisation. Removal of abnormal facial hair is preferable/permited in the majority opinion and mandatory for females in the Mālikī School. Change practised universally by Muslims of sound nature, such as ear piercing, is permitted. Additionally, mutilation that ensues in battle, retaliation in kind, is incidental or serves a valid purpose is permitted in the majority opinion; beneficial castration of animals and the use of a branding iron are permitted in the majority opinion; and practices that are not in pursuit of vain and frivolous aims but rather for valid reasons of need are permitted. Thus, the long and short of the issue is that the lawgiver has permitted certain changes and proscribed others on account of the additional extension and abomination.

Homo-transplantation is not a vain or frivolous pursuit but a procedure founded on altruism and beneficence that restores vital bodily functions. If a prohibition of changing the creation of Allah is conceded in homotransplantation, then, in the event of mutually conflicting harms, the greater of the two harms is given consideration by committing the lesser of the two. The harm of changing the creation of the donor is, arguably, less than the harm in loss of life or bodily function of the potential recipient.

Self-ownership and property rights

The lack of self-ownership and property rights is another reason cited to prohibit the donation of human body parts. The human body is not property, nor do we have ownership of our bodies, and so do not have the right of disposal through sale, gift or bequest. Whilst a lack of self-ownership is conceded, the emphasis on this and on the human body not being property is, in my opinion, misplaced. Neither does ownership bring absolute right of disposal, nor does mere stewardship equate to the absence of the right of disposal. In both cases, one remains bound by a number of divine laws. Thus, the real question is, what level of autonomy and authority does the individual enjoy over his person? The jurists discuss this under the exposition of the concept of rights. The life and body of the individual combines both a right of the individual and a right of God [in terms of public interest over which no one individual has an exclusive claim]. The individual enjoys the right of disposal until such disposal conflicts with the right of God. The question thus remains as to where public interest, which is a function of the balance of benefits and harms, lies in the issue of homotransplantation. As long as public interest is served and the benefits to the recipient outweigh the harms to the donor, homotransplantation cannot be deemed to be impermissible on account of a lack of self-ownership.

Blocking the means – Sadd al-Dharāʾiʿ

The doctrine of blocking the means is used to argue that organ transplantation should not be legalised as it will lead to the exploitation of an already disadvantaged underclass, a commercial organ trade, and organ tourism. However, this doctrine is not recognised by the Ḥanafī and Shāfiʿī schools as a principle in its own right. It is the Ḥanbali and, more particularly, the Mālikī schools that afford it independent recognition. Secondly, I would suggest that the fears expressed here are not the experience in the UK, and that the governance structures in the UK make such extremely unlikely. Thus, this doctrine is, arguable, not relevant for the UK. Even in the developing world, it is not a matter of absolute
certainty, dominant probability or even equal probability that such exploitation will result. It is either seldom, or more frequent than that, but less than dominant presumption. As such, it remains, at worst, a disputed matter. According to the principles of Imām Mālik and Imām Ahmad, the doctrine of sadd al-dharāʾiʿ renders it unlawful, whilst according to the principles of Imām Abū Ḥanīfa and Imām Shāfiʿī, it is lawful. This is if, indeed, a direct link can be proven between legalisation and exploitation. I would argue that it is not legalisation that gives rise to exploitation, but rather a failure of governance that allows it. Countries with relatively strong governance structures do not encounter the exploitation that is suffered by countries with weak governance. Thirdly, the reason why such exploitation exists is the lack of an adequate supply of organs. An increase in the supply of organs would reduce the demand for organs. Thus, legalisation of transplantation would, arguably, improve the situation rather than create a problem.

Posthumous pain perception

Despite a popular notion to the contrary, the deceased does not perceive any pain during the process of organ retrieval. Hanafī manuals emphatically state that the deceased does not perceive pain, and that any such notion is inconceivable. As for the punishment in the grave, the settled position is that the body, whether whole, dismembered or even broken down into simple organic matter, is given sufficient life to allow it to perceive pain, even if the exact nature of that life is a matter of dispute. The legal manuals of the Mālikī, Shāfiʿī and Ḥanbalī schools also state that the deceased does not perceive any pain due to third party assault.

Living/Altruistic Organ Transplantation

In the absence of any clear evidence to prohibit the transplantation of human organs and in the pursuit of public interest, it would appear that, subject to certain conditions, living/altruistic organ transplantation is permissible.

Death in Islam

In Islam, like most other cultures and religions, death is defined as the departure of the soul from the body. The reality of the soul, however, has intentionally been left obscure as a demonstration of man’s inability a fortiori to comprehend the reality of God. Its departure from the body is a metaphysical phenomenon that can be determined only through physical signs. Muslim jurists have used physical signs of death identified, on the whole, through observation, experience and rational enquiry. Dominant presumption, which connotes the preponderant outcome when the remaining outcome/s is/are disregarded, normally suffices to determine death, but where there is a reason for doubt, the declaration of death will be delayed until the doubt is removed. Cardiac arrest is not mentioned by the classical jurists as a sign of death, but contemporary Muslim scholars have recognised irreversible cardio respiratory arrest as a reliable sign of departure of the soul. The IIFA also recognised the irreversible cessation of all brain function as a reliable sign of departure [even without cardiac arrest], but the IFA (Makkah) and the IFA (India) also required cardio respiratory arrest. I too am of the opinion that cardio respiratory function supported by mechanical ventilation cannot be discounted when determining death, as their continued function does not allow a dominant presumption of death. The individual is considered to be alive until there is evidence to the contrary.
The deliberations of contemporary Muslim scholars do not appear to give due regard to the philosophical definitions of death that death criteria attempt to satisfy. These philosophical definitions include: irreversible loss of vital fluid, blood and air-flow; irreversible loss of function of the organism as a whole; irreversible loss of personhood; and the irreversible loss of the capacity for consciousness combined with the irreversible loss of the capacity to breathe. The corresponding criteria for these definitions are: irreversible cessation of cardio respiratory functions; irreversible loss of whole-brain function; irreversible loss of higher brain function; and irreversible loss of brain-stem function. None of these criteria are without their criticisms, and none are directly concerned with the departure of the soul from the body, which itself is considered “best left to religious traditions” or an impossible basis to derive criteria of death from on account of the “impossibility of ascertaining the locus of the soul.”

Organ Donation after Circulatory Determination of Death (DCDD)

A ventilator dependent patient, who suffers cardiorespiratory arrest, is declared dead after five minutes on the premise of irreversibility and the organs are expeditiously removed. Whilst 2 minutes are sufficient to discount autoresuscitation, elective resuscitation is not impossible at 5 minutes or even longer. Proponents argue that permanence is 100% predictive of irreversibility or is as good as irreversibility. Others reject this stance stating that, a prognosis of imminent death has been conflated with a diagnosis of death. Some call for a moratorium until open public debate has been had, whilst others hold that we should simply be transparent and drop the dead donor rule. Mcgee and Gardiner defend permanence arguing that irreversibility is ambiguous and can mean either or both (a) not capable of being resuscitated electively or (b) not capable of autoresuscitation. When resuscitative measures are not appropriate, only interpretation (b) need apply [for which 5 minutes is more than adequate]. Additionally, notions of irreversibility, as defined by reference to human conduct, are recent concepts reflecting recent developments in technology, and that it makes sense to decide to continue to classify those people who were dead before the advent of CPR as dead post CPR, just as in those cases where CPR is inappropriate and so does not apply. However, this understanding of irreversibility does not accord with the notion of the soul departing the body, and rather allows the retrieval of organs before such departure, giving credence to the charge that it implements premortem interventions which can hasten death. The concept of irreversibility that contemporary Muslim scholars hold is of elective irreversibility to ensure that the soul has indeed departed and was, arguably, always implied. Thus, DDCD is not permissible until the point of elective irreversibility has lapsed.

Organ Donation after Neurological Determination of Death (DDBD)

In the UK, this refers to when organs are removed after brain injury is suspected to have caused irreversible loss of the capacity for consciousness and irreversible loss of the capacity for respiration before terminal apnoea has resulted in hypoxic cardiac arrest and circulatory standstill. However, a diagnosis of death on this basis does not, on two accounts, satisfy the definition of death according to the IIFA, which requires (1) complete, irreversible cessation of all brain [and not just brainstem] function and (2) the onset of decomposition. The IIFA verdict on organ donation also required the complete cessation of all brain functions [and not just of the brain stem]. Similarly, it does not satisfy the definition of death according to the Makkah based IFA, the Fatwā Committee of the Kuwait Ministry of Endowments, most contributors to the IFA (India) deliberations in 2007 on brain death, and many Muslim scholars, all of whom did not consider even whole brain death alone to be sufficient to effect a ruling of death but also required cardio respiratory arrest. I too am of the opinion that
brainstem death or even whole brain death alone are not sufficient to indicate departure of the soul and that cardio respiratory function supported by mechanical ventilation cannot be discounted when determining death. Thus, DDBD following irreversible loss of the capacity for consciousness combined with the irreversible loss of the capacity for respiration 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.

Deceased Organ Donation and Transplantation

In the event that all requirements have been satisfied to indicate the departure of the soul from the body, and in the absence of any clear evidence to prohibit the transplantation of human organs and in the pursuit of public interest, it would appear that Deceased organ donation and transplantation of all organs/tissues besides the gonads is permissible provided:

1. The situation is one of medical necessity.
2. There is a reasonable chance of success.
3. The organ or tissue is donated with the willing consent, whether express or implied, of the deceased.
4. The procedure is conducted with the same dignity as any other surgery.

Transplantation of the gonads is not permissible as they continue to carry the genetic characteristics of the donor even after transplant into the recipient. However, I see no reason for the prohibition of transplanting the external genitalia, as further to the transplant, they take the rule of the body of the recipient and do not carry the genetic characteristics of the donor.

Donation of stem cells

It is permitted to donate stem cells from:
1. Adult tissue – e.g., bone marrow
2. Tissue of a minor with parental permission
3. Cord blood
4. A miscarried foetus or a foetus aborted for a reason valid in sharīʿa
5. A surplus embryo incidental to the process of IVF.

The basis of permission in these five cases is that human dignity is not compromised and there is no other reason to prohibit the practice. However, stem cells obtained through therapeutic cloning are not permitted.

And Allah knows best.
Mufti Mohammed Zubair Butt
SECTION 1

Review of the 1995 fatwa of The Muslim Law (Shariah) Council:

On 26th August 1995, The Muslim Law (Shariah) Council, led by the late Dr Zaki Badawi, issued a fatwa on organ transplants. The fatwa sought to answer a number of questions:

1. Is it allowed to remove an organ like the [sic] kidney from the body of a living person and transplant it in to [sic] the body of a sick person whose life depends on it?
2. Is it permissible to remove an organ from the body of a dead person to be used to save the life of a living person?
3. Is a person allowed to donate his body or part of it to be used after his death in saving the life [sic] of other people?
4. Does Islam recognise the new definition of death that is brain stem death?
5. If it does[,] is it permissible to remove from brain stem dead persons organs for transplant while there are signs of body functions like heart beat[,] temperature and breathing?10

The Muslim Law (Shariah) Council made a very conscious decision to engage only Muslim scholars based in the UK11 and thus made only an implicit reference in passing to fatwas outside the UK.12 This was to allow the council to arrive at a conclusion that was not limited or determined by the fatwas and resolutions from outside the UK,13 particularly the Indo-Pak region where dissent was the greatest. However, whilst I support the notion of engaging only Muslim scholars based in the UK, and I also accept that there was some representation from a range of denominational, if not legal, schools, I have reservations as to how true and, in some cases, authoritative this scholarly representation actually was. There were a total of 19 signatories to the fatwa.14 Of these, three were affiliated to The Muslim College, which shares the same address as The Muslim Law (Shariah) Council; two to The International College of Islamic Sciences, London, which is an organisation of the Shia sect; one to the Jamia-e-Ahl-e-Hadith; four15 to the World Islamic Mission, which is an organisation of the Barelvi tradition; two others16 affiliated to the Barelvi tradition; one to Regent’s Park

10 The Muslim Law (Shariah) Council fatwa on organ transplants, p. 2.
11 The press release for the fatwa stated as follows: “The Council[,] which consists of scholars from all the major Muslim Schools of Law in Great Britain, together with three distinguished lawyers has considered the issue of organ transplant and resolved that.”
12 “After a thorough consideration regarding medical opinion and several edicts issued by different religious bodies, the Council arrived at the following conclusions:” The Muslim Law (Shariah) Council fatwa on organ transplants, p. 3.
13 Personal conversation with the late Dr Zaki Badawi at the “Organ donation and transplantation: The multifaith perspective” conference held in Bradford on 20th March 2000.
15 Including Moulana M. Shahid Raza and Mr S. G. Syedain.
16 Mufti Mohammed Muniruzzaman and Mufti Alauddin.
Mosque, London; one to UK Islamic Mission; one to the Islamic Foundation, Markfield; one remains obscure;¹⁷ and three barristers.

A fatwa is simply an opinion of the issuer and is, normatively, not representative of different schools. Thus, an omission of one or more schools is not objectionable in of itself. However, the press release for this fatwa issued by the late Dr Zaki Badawi stated that the Council consisted “of scholars from all the major Muslim Schools of Law¹⁸ in Great Britain”,¹⁹ but there was at least one glaring omission: that of the Deobandi School, which accounts for about 41.2%²⁰ of UK mosques and has by far the largest number of seminaries²¹ and home grown scholarship. I also remain to be convinced that the second largest group (Barelvi School) in terms of percentage share of UK Mosques (23.7%)²² was adequately represented. The same can be said of the Salafi School (9.4%).²³ This may help to partially explain why, aside from non-utilisation of effective channels of communication (Randhawa 1998),²⁴ the fatwa appears to have had little impact at a grassroots level.

The fatwa listed the premises for its opinion as follows:

1. A person has the [sic] legal authority over his own body, attested by the fact that he can hire himself for work which might be difficult or exhausting. He may also volunteer for war which might expose him to death.
2. A person is forbidden from harming himself or others (It is not legitimate in Islam to inflict harm on others or to suffer harm from them - Hadith).
3. In case of Necessity[,] certain prohibitions are waived as when the life of a person is threatened, the prohibition on eating carrion or drinking wine is suspended.
4. Confronted with two evils a person is permitted to choose the lesser of the two, as in the case of a starving person whose life could be saved by either eating carrion or stealing from another person’s food. He would be permitted to opt for the latter.
5. Islam made it an obligation upon the sick to seek treatment.

The fatwa used the first premise to advance the argument for a degree of personal sovereignty. It used the second premise to argue protection for the rights of the donor and the third premise to argue that necessity allows organ donation. The fourth premise was used to argue that organ retrieval from the donor is lesser of an evil than the loss of life or bodily function of the recipient. The fifth premise was used to argue that it was even necessary²⁵ to use organ transplantation as a method of treatment. I will discuss the validity and degree of applicability of premises 1, 3 and 4 during the course of offering my own opinion. Premise 2 is sound and not a matter of dispute whilst premise 5, and particularly in relation to organ

¹⁸ The reference here to schools of law is in a figurative sense wherein the connotation of law has been extended to denominational differences, rather than actual schools of law. The actual schools of Sunnî law are the Ḥanafî, Mâlikî, Shâfi‘î and Ḥanbalî schools, whilst the schools of Shî’î law include the Ja‘farî and Zaidî schools. The signatories to the fatwa of the Islamic Law (Shariah) Council did not represent all of these legal schools, all of which have adherents in the UK, but rather represented, in the main, [select] denominations.
¹⁹ Source: Press release on organ transplants by the Muslim Law (Shariah) Council on the council’s letterhead, author’s personal copy.
²³ Ibid.
²⁵ This was also expressed to me personally by the late Dr Zaki Badawi over the lunch interval at the “Organ donation and transplantation: The multifaith perspective” conference held in Bradford on 20th March 2000.
Is it an obligation upon the sick to seek treatment?

Whilst medical treatment is encouraged and was the established practice of the Prophet (peace and blessings of Allah be upon him), seeking medical treatment was not made an obligation upon the sick. This is quite evident from the deliberations of the classical jurists. The majority opinion across all four Sunni schools of jurisprudence hovers around simple permissibility and preferability. The opinion in the Hanafi School is founded on the premise that medical treatment gives rise, at best, to presumptive obligation to cure, and whilst a cure remains only a presumption one cannot be obligated to pursue medical treatment. e.g., if a doctor advises a diarrhoea patient or a patient suffering from a blood disorder to undergo a particular treatment but the patient declines the treatment and dies as a result, the patient incurs no sin. The rationale offered is that cure is not the definitive outcome. The author of Jami’ al-Fuṣūl, Ibn Qadī Samāwana (d. 823/1420) and the compilers of al-Fatāwā al-ʿĀlamghīrīyya have expounded on this rationale, which may be summarized as follows:

Removal of harm is effected by one of the following three types of cause:

1. Maqāṭū - definitive. i.e., harm is removed as a rule and without fail. e.g., consumption of food and water to remove hunger and thirst respectively. It is mandatory to adopt such means where there is a threat to one’s life or limb. Consequently, if one abstains from food or drink, and in doing so dies of hunger or
thirst respectively, one will be sinful. Similarly, by analogy, for those ailments where a cure is achieved as a rule and non-treatment will lead to significant harm or certain death, treatment is mandatory within one’s means.

2. **Maṣnūn** – presumptive/probable/expected. i.e., removal of harm is often achieved. However, there are many instances when the desired result is not realised, e.g., undergoing venesection – *faṣd* or cupping - *ḥijāma*, taking a purgative agent - *mushil*, relieving humoral imbalances such as ‘hot’ with ‘cold and vice versa, oxymel – *sakanjabīn* and convolvulus- *saqamūnyā* to treat yellow bile and diarrhoea. Medical treatments have been deemed to fall within this category. However, Ibn Qāḍī Samāwān has added that, if one finds, through experience, that a presumptive cause effects a particular cure in his case, that cause becomes definitive.

3. **Mawhūm** – imagined/speculative. i.e., removal of harm is not a realistic expectation. e.g., cauterisation – *kayy* and incantation - *ruqya*. It is better to abstain from such intervention.

Although jurists of the Mālikī School have discussed the permissibility of medical treatments, they have not, in general, and in any obvious way, discussed whether such treatments can be deemed mandatory. Only Ahmad al-Dardīr (d. 1201/1786) appears to have mentioned in *al-Sharḥ al-Ṣaghīr ilā Aqrāb al-Masālik* that, “sometimes it is mandatory”. Even Ahmad al-Ṣawī (d. 1241/1826) in his gloss on *al-Sharḥ al-Ṣaghīr* has not offered any comment. However, jurists of the Shāfiʿī School, who are most prominent in the discussion of whether medical treatment can be deemed mandatory, have asserted that the Mālikī jurist, al-Qaḍī ‘Iyāḍ (d. 544/1149) has reported a consensus that medical treatment is not mandatory. This is in contrast to the obligation to consume carrion to sustain life or to consume wine to wash down a food morsel stuck in the throat. Whilst the results of the latter two are definitive the effect of the former is not. The implication thereby is that, where cure is definitive, treatment is also mandatory. Some Shāfiʿī jurists have thus expressly stated that treatment can be mandatory. The report of a consensus is also contested because a situation can be cited wherein treatment is mandatory due to a life threatening injury. e.g., binding a venesection
site to stem the flow of blood. Al-Ghazālī (d. 505/1111) has also discussed the three types of cause mentioned above. Ibn Taymiyya (d. 728/1328) has stated that medical treatment is not mandatory even with a presumption of a cure. Other has opined that medical treatment is mandatory with others still adding that “if there is a presumption of cure.” Ibn Taymiyya himself also concludes definitively that medical treatment can be either prohibited - ḥaram, reprehensible - makrūh, permissible - mubah, preferable - mustahab, or mandatory - wājib. In relation to when it is mandatory, he explains that one can be in a situation wherein the illness is so severe that, if not treated, it will result in death and normal treatment will sustain life, similar to food for a weak person or sometimes the removal of blood. Contemporary Ḥanbalī scholars, such as the late Muhammad Sulaymān al-Asqar, have upheld the position that, if the illness is fatal and medical intervention will definitely affect a cure, then it is mandatory, such as stemming a haemorrhaging wound. If the illness is not fatal, it is merely recommended. The late
Muḥammad ibn Ṣāliḥ al-Utheymīn, another prominent contemporary Ḥanbalī scholar, concludes that the more correct position is that, where a cure is known or there is a dominant presumption and a danger of death in abstention, medical treatment is mandatory. If cure is a dominant presumption, but abstention is not certain to be fatal, then it is better. If both a cure and fatality are equal, then abstention is better, so that an individual does not unknowingly throw himself into destruction. 34

The 1995 fatwa of The Muslim Law (Shariah) Council also stated, with the support of Quranic verses 32:7-9 and 39:42, that Man consists of a material body and a spiritual soul and that life ceases upon the departure of the soul from the body. This departure is associated with certain experiential signs which used to include the heart as the centre of life in the body. However, according to modern medical opinion, the brain is now considered “to be the central and crucial part” 35 and “the presence of pulse or movement after the death of the brain stem is not a sign of life.” 36 This assertion is disputed, which I will discuss later during the course of my own fatwa on organ transplantation.

The fatwa did not venture to any great length into the arguments as to why organ transplantation was permitted, and rather omitted much of the material Islamic legal discussion in this regard. In contrast, it focused more on arguing brain stem death was an acceptable criterion of death, but did not acknowledge whole brain or higher brain criteria. There was also no discussion as to what philosophical definition of death brain stem death satisfied. 37

The fatwa concluded with a reminder to all but especially to doctors regarding human dignity in life and death. This was to impress upon human dignity, the sacredness of life, and that organs must be donated and not sold. However, the fatwa did not address whether human dignity was compromised by the process of organ retrieval.

The press release for the fatwa stated as follows:

“The Council which consists of scholars from all the major Muslim Schools of Law in Great Britain, together with three distinguished lawyers has considered the issue of organ transplantation and resolved that:

1. The medical profession is the proper authority to define the signs of death.
2. Current medical knowledge considers brain stem death to be a proper definition of death.
3. The Council accepts brain stem death as constituting the end of life for the purpose of organ transplant.
4. The Council supports organ transplant as a means of alleviating pain or saving life on the basis of the rules of Shariah.
5. Muslims may carry donor cards.”

34 The Muslim Law (Shariah) Council fatwa on organ transplants, p. 2.
36 I will discuss this briefly in my own fatwa.
6. The next of kin of a dead person, in the absence of a donor card or an expressed wish of the dead person to donate his organs, may give permission to obtain organs from the body to save other people's lives.

7. Organ donation must be given freely without reward. Trading in organs is prohibited.  

In relation to point 1, I concur that the medical profession is the proper authority to determine the signs of death. However, the medical profession does not enjoy the exclusive prerogative of defining death. For Muslims, death is defined by the Islamic philosophical tradition, which I will discuss during the course of offering my own opinion. In relation to point 2, brain stem death is a criterion for determining death and not a philosophical definition of death. Death is a philosophical or moral question and not a medical or scientific one as I will discuss during the course of offering my own opinion. Points 3, 4, 5, 6 and 7, will be covered during the course of offering my own opinion.

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38 Source: Press release on organ transplants by the Muslim Law (Shariah) Council on the council’s letterhead.
SECTION 2

Review of the 2000 Fatwa39 of European Council for Fatwa and Research:

The European Council for Fatwa and Research (ECFR), based in Dublin, Ireland, was established in March 1997 in London as an initiative of the Federation of Islamic Organisations in Europe (FIOE),40 which was itself formed in 1998 by the Egypt based Muslim Brotherhood.41 The stated aims of the ECFR include bringing together European Muslim scholars to unify their positions on jurisprudential issues with a particular focus on the European context.42 To this end, the terms of the ECFR constitution required that not more than 25% of members could be from outside of Europe.43 However, for whatever reason, this requirement has not been adhered to. Until November 2018, the ECFR was presided over by Sheikh Yusuf al-Qaraḍāwī, but he has since then been succeeded by Sheikh Dr ‘Abdullāh al-Judāi’, Imām of the Leeds Grand Mosque, with a new administrative team comprising Sheikh Dr Ahmad Jābāllāḥ (France) as Vice President, Sheikh Dr Suhaib Ḥasan, Imām and Trustee of Masjid & Madrasah al-Tawhīd Trust, Leyton as second Vice President, Sheikh ʿAbdullāh bin Bayḍa ʿAlāwī al-Qaraḍāwī is also absent from the discussion of the IIFA on organ transplantation.44 Whilst this new development does bring a more distinctly European face to the ECFR, in the UK, the ECFR enjoys little traction amongst the Deobandi and Bareli schools, which account for about 64.9% of the mosques and have their own ad hoc structures for arriving at legal opinions. Notwithstanding, the ECFR does represent a credible academic voice that is of interest to scholars not affiliated to the ECFR even if the decisions of the ECFR are not quite met with ready acceptance.

In the sixth session of the ECFR held in Dublin, Ireland [28th August to 1st September, 2000], the ECFR expressed its opinion on organ transplantation by declaring its ratification45 of the resolutions of the Islamic Fiqh Academy (IFA) of the Muslim World League based in Makkah, Saudi Arabia and the International Islamic Fiqh Academy (IIFA) of the OIC based in Jeddah, Saudi Arabia, both of which allowed organ transplantation with conditions. There is a material degree of overlap between these three organisations and Sheikh Yusuf al-Qaraḍāwī is a frequent participant in each one of them,46 although he was absent from the session when the Islamic Fiqh Academy of the Muslim World League deliberated on organ transplantation.47 Sheikh Yusuf al-Qaraḍāwī describes the role of the ECFR as being complementary to these and other academies.48 In its ratification, the ECFR simply quoted

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39 https://www.e-cfr.org/ accessed 30/11/2018
43 Ibid, p. 18.
44 https://www.e-cfr.org/ accessed 03/12/2018
46 Likewise, Sheikh Abdullah bin Sulaiman al-Manī’ is also a member of each of these three organisations whilst Sheikh ‘Ali Muhīy al-Dīn ‘Ali al-Qaradagḥī and Sheikh ‘Abd al-Sattār Abū Ghudda are members of the ECFR and the IIFA and Sheikh Abdullah bin Bayya is a member of the ECFR and the IFA.
verbatim three resolutions of the International Islamic Fiqh Academy without any discussion on theological underpinnings or acknowledgement of alternative opinions:

1. Resolution No. 26 (1/4) concerning “Organ transplant from the body (dead or alive) of a human being on to the body of another human being”,
2. Resolution No. 57 (8/6) concerning “Transplant of Genital Organs”, and
3. Resolution No. 54 (5/6) concerning “Transplant of Brain Tissues and Nervous System”.

Resolution No. 26 (1/4) was drawn up after nine written submissions of varying lengths in which the authors took a range of positions between absolute prohibition [with the exception of blood] and restricted permission. The nine written submissions were followed by an open debate that demonstrated further the range of opinions held. This was acknowledged by the Secretary General of the IIFA, Dr Ḥabīb ibn al-Khayja who proposed a committee of five scholars and two doctors with the remit to define the parameters of the discussion, take account of existing resolutions and fatwas of other bodies, deliberate further and adopt a position. The committee proposed a resolution, the wording of which was openly discussed, debated and amended. However, it is unclear as to how the proposed resolution was first formulated and how the dissenting voices were satisfied, as this is not included anywhere in the 418 pages of the discussion on organ transplantation. During the debate on the wording, Sheikh Muḥammad ʿAbd al-Laṭīf al-Farfur registered his opposition to the entire resolution save for in relation to blood. The late President of the IIFA, Sheikh Bakr ibn ʿAbdullāh Abū Zaid, did, however, point out that the resolution and the clauses thereof were to be passed based on majority and any reservations should be registered in writing with the compiler of the resolution. The resolution restricted the discussion on organ transplantation to when the aim was to preserve life or basic bodily function, and the recipient enjoyed a life of dignity in law. In relation to Deceased transplantation the resolution noted that death comprised two situations:

1. Death of the brain with the complete cessation of all of its functions in which, medically, there is no reversibility.
2. Complete cessation of cardio respiratory functions in which, medically, there is no reversibility.

In the first situation, two requirements needed to be met: firstly, the complete cessation of all brain functions [and not just of the brain stem] and, secondly, medical irreversibility [and not simply permanence]. The second situation also had two requirements: firstly, the complete cessation of cardio respiratory functions and, secondly, medical irreversibility [and not simply permanence]. The resolution also stated that, in these two situations,
consideration had been given to the resolution\(^{60}\) of the academy in its third session [held in Amman, Jordan in 1986]. There are, however, material as well as nuanced differences between the two resolutions in relation to particularly how brain death is determined. It is unclear from the written record of the submissions and discussions of the IIFA on organ transplantation as to why the IIFA did not simply adopt its own previous resolution on brain death in full but chose only to give it consideration. The latter resolution on organ transplantation required medical irreversibility to determine death whilst the earlier resolution on brain death also required the onset of decomposition. The requirement of decomposition itself came in the light of the open debate where the medical doctors, in particular, Dr Muhammad Ḥabīb al-Bār, stated that, despite ventilation, autolysis would occur following brain death.\(^{61}\) The medical doctors were also unanimous in their support for brain stem death, yet the resolution stipulated all brain function. It is unclear from the written record of the submissions and discussions of the IIFA concerning the removal of resuscitation equipment as to why this was the case. Both resolutions thus, by implication, rule out death if there is residual brain function whilst the stipulation of autolysis in the earlier of the two resolutions is a further confounder for organ retrieval protocols.

Resolution No. 26 (1/4) concluded with eight points which have been summarised\(^{62}\) below:

First: Autotransplantation is permitted for therapeutic purposes, provided the benefits accruing therefrom outweigh the harms caused thereby.

Second: Allograft transplantation of regenerative organs, such as blood and skin, is permitted. The donor must enjoy full legal capacity, and the requirements of sharīʿa must be given due regard.

Third: It is permitted to avail of part of an organ that has been removed for medical reasons from a third party, such as the cornea when the eye has been removed.

Fourth: It is forbidden to transplant an organ upon which life depends, such as the heart, from a living person.

Fifth: It is forbidden to transplant any organ that deprives a living donor of a basic bodily function even if the life of the donor does not depend upon it, such as the corneas of both eyes. However, if basic bodily function is affected only partially, then that requires further consideration.

Sixth: It is permitted to transplant an organ from a cadaver if the life or basic bodily function of the recipient depends upon it, provided this was authorised by the deceased before his

\(^{60}\) Majalla Majmaʿ al-Fiqh al-Islāmī al-Duwālī, Majmaʿ al-Fiqh al-Islāmī, Jeddah, Third Session, (1986), 2:809. The actual text of the resolution [concerning the removal of resuscitation equipment] and my own English rendering thereof are as follows:

1. When his heart and breathing come to a complete stop, and the doctors decree that this stoppage is not reversible.
2. When all of the functions of the brain have failed to the fullest degree and specialist expert doctors decree that this failure is not reversible and his brain has begun to decompose.

\(^{61}\) Ibid, 2:805.

\(^{62}\) The full English text of these eight points has been included under Appendix 1.
death or by his heirs after his death or with the permission of concerned authorities if the
deceased has not been identified nor has any heirs.

Seventh: The permissibility of transplantation comes with the condition that it is done
without compensation. However, if the recipient is forced to pay for the organ or the
recipient offers consideration as voluntary compensation or a token of appreciation, then this
is a matter for further consideration.

Eighth: All cases and forms other than those referred to above, which are relevant to the
issue, are the subject of further discussion and research.\footnote{Resolutions and Recommendations of the Council of the Islamic Fiqh Academy, Islamic Fiqh Academy, Jeddah, p. 53-54.}

Resolution No. 57 (8/6) prohibited the transplantation of the testicles and the ovaries but
allowed transplantation of reproductive organs that did not transfer hereditary attributes but
excluding the genitals.\footnote{The full English text of Resolution NO. 57 (8/6) has been included under Appendix 2.}

Resolution No. 54 (5/6) permitted, in principle, autotransplantation of tissues from the
adrenal gland and transplantation of brain tissue from an animal foetus but prohibited the
same from a living human foetus or a baby born with anencephaly. However, it permitted
the same from a natural miscarriage, an abortion sanctioned in Islam or from brain cells
cultured in a laboratory.\footnote{The full English text of Resolution NO. 54 (5/6) has been included under Appendix 3.}

The ECFR opinion concluded with three additional points:
1. The first point related to respecting the wishes of the donor, his heirs or a third party
   authorised by the donor in deciding who the beneficiary should be and decreed that it
   was necessary to adhere to this wish as much as possible.
2. A written instruction to donate posthumously will be governed by the laws on
   bequests and the heirs or other third parties could not alter the bequest.
3. In any jurisdiction in which the law of deemed consent applies, the absence of an
   expression not to donate is implied consent.

I will comment on each of these points in my own fatwa below:
SECTION 3

Organ transplantation in Islam

Whilst organ transplantation is generally viewed to be a relatively new phenomenon, the legal manuals of Muslim jurists do contain discussions of the more primitive forms. The founder jurists of the Hanafi School opined on the return and replacement of a fallen tooth. Imam Abū Ḥanīfa (d. 150/768) and Imam Muhammad (d. 189/408) disallowed both whilst Imam Abū Yūsuf (d. 182/401) allowed the return of a fallen tooth but not the graft of a tooth from a cadaver.66 Similarly, al-Nawawī (d. 676/1277) records a difference of opinion amongst Shāfiʿī jurists of Iraq and Khurasān in relation to the return of a fallen tooth. The former considered it impermissible, as they deemed it to be impure, whilst the position of the school is that of the latter, who considered it to be pure.67 The Prophet (peace and blessings of Allah be upon him) is reported to have miraculously returned the eye of one of his companions, Qatāda ibn al-Narrated, after it had fallen on to his cheek during the Battle of Uhud, and it was subsequently the better and sharper of the two eyes.68 He is also reported to have reattached the arm of his companion, Khubaib ibn Yasāf during the battle of Badr, leaving only a line as a scar.69

The discussion below will offer my opinion on the use of prosetheses, xenotransplantation, auto transplantation and homotransplantation, and presupposes the following:

1. The situation is one of medical necessity, viz. to save life or restore a fundamental bodily function and transplantation is the only viable option.
2. The harm to a live donor is negligible or relatively minor that it does not disrupt the life of the donor.
3. There is a reasonable chance of success.
4. The organ or tissue is donated with willing consent without any form of coercion.
5. The procedure is conducted with the same dignity as any other surgery.
The use of prostheses, per se, is permissible. This falls under what has been subjected to humans for them to benefit. The justification for this can also be deduced from specific events from the era of the Prophet (peace and blessings of Allah be upon him) when he instructed `Arfaja ibn As`ad to obtain a gold nose after it had been severed on the Day of Kulāb [a pre-Islam battle] and the silver nose he had replaced it with produced an offensive odour. Classical jurists from all schools use this incident to opine permissibility. Permissibility of normatively prohibited gold for men is evidence that, at a time of need - ḥāja, prostheses from an otherwise unlawful source is permitted.

"And He has subjected to you all that is in the heavens and all that is in the earth; all from Him. Verily, that are signs for a people who think deeply."

[Qurʾān: 45:13]

"And We brought forth iron wherein is mighty power and many benefits for the people, ..."

[Qurʾān: 57:25]
Xenotransplantation

The transplant of animal organs and tissue that are pure [i.e. the animal is lawful to eat and has been killed in accordance with Islamic law] is permitted. This also falls under what has been subjugated to humans for them to benefit in a variety of ways, and is included in the general exhortation to take up medical treatment with that which is lawful. The classical legal manuals of all schools are replete with statements allowing the use of animal organs and tissue that are pure. However, they also clearly state that impure organs and tissue, with teeth and bones being the oft-repeated but not exclusive examples, are not permissible to use. Moreover, if used, there is a difference as to whether they have to be removed once again. According to Imām Abū Ḥanīfa and Imām Mālik (d. 179/795), a bone graft using impure [e.g., porcine] bone does not have to be removed despite being originally impermissible. If removal would lead to harm to life, limb or bodily function, then the position of the Shāfi‘ī and Ḥanbalī schools is that it will not then be removed. There are some jurists within the Shāfi‘ī School who hold that it will be removed, even if it would lead to harm to life, limb or bodily function, whilst Imām al-Nawawī states that, if the individual

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And He has subjected to you all that is in the heavens and all that is in the earth; all from Him. Verily, in that are signs for a people who think deeply. [Qur’ān: 45:13]
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Autotransplantation

Autotransplantation is the transplant of an organ or tissue from one part of the body to another part in the same individual. Classical jurists have opined on its permissibility, particularly when there is no permissible alternative. In summary, the transplant of animal organs and tissue that are pure is permissible. Equally, when there is no permissible alternative, the transplant of animal organs and tissue that are impure is also permissible.

Karbār al-ʿĀmm al-Ḥanīfī: 366/44: If a patient is needy and cannot find a pure alternative, he is excused.

In summary, the transplant of animal organs and tissue that are pure is permissible. Equally, when there is no permissible alternative, the transplant of animal organs and tissue that are impure is also permissible.

Auto transplantation

Auto transplantation is the transplant of an organ or tissue from one part of the body to another part in the same individual. Classical jurists have opined on its permissibility, particularly when there is no permissible alternative. In summary, the transplant of animal organs and tissue that are pure is permissible. Equally, when there is no permissible alternative, the transplant of animal organs and tissue that are impure is also permissible.

Karbār al-ʿĀmm al-Ḥanīfī: 366/44: If a patient is needy and cannot find a pure alternative, he is excused.

In summary, the transplant of animal organs and tissue that are pure is permissible. Equally, when there is no permissible alternative, the transplant of animal organs and tissue that are impure is also permissible.
the Mālikī School, although there is a contrary position. 79 Latter Ḥanafī jurists describe an excised part of the body, such as an ear, as being pure for the person from whom it was excised, even if was still detached from the original site. 80 The position of the Ḥanbalī School too is that replant is permitted, as a fallen tooth or an excised body part remains pure. 81 This is also the position of the Shāfī'ī jurists of Khorasan and the adopted position within the Shāfī'ī School. 82 Thus, the majority opinion across the jurists of all four schools is that, in principle, replant to the original site is permissible. The primary pivot of the deliberations of the jurists is the purity of the excised body part, whilst jurists of the Shāfī'ī School also mention the absence of a compromise of human dignity. 83 Both premises, arguably, also maintain in autotransplantation, wherein there is only a change in site. The body part remains pure and there is, arguably, no compromise in human dignity. On the contrary, the body part forms a more vital function than when in its original site, e.g., transplant of a blood vessel from the arm or leg in a coronary bypass. This position also upholds one of the fundamental goals of Islamic law, viz. protection of life; is supported by the legal maxim: *al-darar yuzāl* – the harm is to be removed, 84 the pursuit of optimal benefit

79. See Rauf’s jurisprudence. 80. The position of the Ḥanbalī School is also that replant is permissible, as a fallen tooth or an excised body part remains pure. 81. This is also the position of the Shāfī'ī jurists of Khorasan and the adopted position within the Shāfī'ī School. 82. Thus, the majority opinion across the jurists of all four schools is that, in principle, replant to the original site is permissible. The primary pivot of the deliberations of the jurists is the purity of the excised body part, whilst jurists of the Shāfī'ī School also mention the absence of a compromise of human dignity. 83. Both premises, arguably, also maintain in autotransplantation, wherein there is only a change in site. The body part remains pure and there is, arguably, no compromise in human dignity. On the contrary, the body part forms a more vital function than when in its original site, e.g., transplant of a blood vessel from the arm or leg in a coronary bypass. This position also upholds one of the fundamental goals of Islamic law, viz. protection of life; is supported by the legal maxim: *al-darar yuzāl* – the harm is to be removed.
Homotransplantation

Homotransplantation is the transplant of an organ or tissue from one individual to the body of another individual. Classical jurists have also opined on, albeit primitive, forms of homotransplantation and it is an inescapable fact that they deemed it to be normatively impermissible. Frequent examples are hair extensions, human bone as a splint or a graft, skin and nails. The reasons cited are human dignity; impurity of the excised body part; the Ḥādhāths prohibiting the breaking of the bone of a dead person and the accepted norms of human hair extensions; and deception. However, al-Subkī (d. 756/1355) and other latter jurists of the
Shāfiʿī School did allow the use of bone from individuals who were deemed to lack a life of dignity in law. It was also deemed permissible when it was left as the only available option. Contemporary scholars have added further reasons which I will include in my discussion below:

**Critical points of debate in homotransplantation**

From all my years of study of organ transplantation, there are, in my opinion, a number of issues which represent the critical points of debate to determine the permissibility or otherwise in Islam of homotransplantation. I will now discuss each of these issues below.

**Human dignity**

Human dignity in Islam is recognised for all humans as an expression of God’s favour and grace. It is the absolute natural right of every individual regardless of gender, colour, race or faith. This right is established from the explicit, alluded and inferred meanings of the Qur’an and Sunnah.
evidentiary texts. Examples of evidentiary texts wherein human dignity represents the principal theme and purpose of the text are as follows:

1. “And We have certainly honoured the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference.” [Qurʾān, 17:70]

According to the exegetes Abū al-Saʿūd (d. 951/1505) and Mahmūd al-Alāsī (d. 1270/1854), this dignity extends to all humans, including both pious and sinners, with al-Alāsī adding that they have been endowed with nobility and numerous excellences that cannot be encompassed. Al-Qurṭubī (d. 671/1273) suggests that, from all the reasons suggested for the superiority of the human race, the correct reason is the faculty of intellect, which is the basis of obligation. The faculty of intellect is also a reason reported from the Companion, Ibn ʿAbbās.

2. “O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted.” [Qurʾān, 49:13]

The inherent dignity of mankind is sacred, and the only ground for superiority is God-consciousness (taqwā). Ibn Kathīr (d. 747/1349) explains that all people are equal in their earthly connection to Adam and Hawwāʾ [Eve]. They differ only in matters of religion, viz. obedience to Allāh and following His Messenger. Thus, whilst inherent human dignity is common to all humans, there is a lever of acquired dignity founded in faith and practice in which humans differ. This varies from person to person amongst adherents of even the same faith and is not that dignity that is primary relevance to the discussion on organ transplantation.

3. “[So remember] when your Lord said to the angels, ‘Indeed, I am going to create a human being from clay. So when I have proportioned him and breathed into him of My spirit, then fall down to him in prostration.’” [Qurʾān, 38:71-72]

4. “It is narrated from [ʿAbdurrahmān] ibn Abū Laylā that Qays ibn Saʿd and Sahl ibn Ḥunaif were at al-Qādisiyya when a funeral possession passed by them both so they both stood. It was said to them, “Indeed, it [funeral possession] is of the people of the land [of non-Muslims].” So they said, “Verily, a funeral possession passed by the

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Messenger of Allāh, peace and blessings be upon him, so he stood. It was said to him, ‘Verily, it is a Jew.’ So he said, ‘Is it not a person?’” 95 [Muslim]

Examples of evidentiary texts wherein human dignity is not the principal theme and purpose of the texts, yet they do embody a necessary rationally concomitant inference of the same are as follows:

1. “We have certainly created man in the best of stature.” 96 [Qurʾān, 95:4]

2. “And [remember], when your Lord said to the angels, ‘Indeed, I will make upon the earth a vicegerent.’ They said, ‘Will You place upon it one who causes corruption therein and sheds blood, while we declare Your praise and sanctify You?’ He said, ‘Indeed, I know that which you do not know.’” 97 [Qurʾān, 2:30]

3. “Do you not see that Allah has subjugated to you whatever is in the heavens and whatever is in the earth and has amply bestowed upon you His favours, [both] apparent and hidden?” 98 [Qurʾān, 31:20]

4. “And do not kill the soul that Allāh has made unlawful [to be killed] except by [legal] right.” 99 [Qurʾān, 6:151]

In each of the above verses, human dignity is not the principal theme and purpose of the text, yet each text does yet embody a necessary rationally concomitant inference that human beings have been bestowed with dignity. This dignity is inherent, independent of faith, ethnicity, lineage, social rank, personal excellence, or any other qualification, universal and enjoyed equally by every member of the human fraternity, all of whom have been created from a single soul. 102 It exhibits in a variety of ways including being fashioned in the best of

23489 - It is narrated from Abī Naḍra, “Someone who heard the sermon of the Messenger of Allāh (peace and blessings of Allāh be upon him) on the middle day of the days of al-Tashrīq told me that he said: ‘O people! Verily, your Lord is one and verily, your father is one. Verily, there is no superiority for an Arab over a non-Arab or for a non-Arab over an Arab, or for a red man over a black man, or for a black man over a red man, except in terms of taqwā. Have I conveyed the message?’ They said, ‘The Messenger of Allāh (peace and blessings of Allāh be upon him) has conveyed the message.’” [Musnad Ahmad, 38:474]

“O mankind, fear your Lord, Who created you from a single soul and created from it its mate and dispersed from them both many men and women. And fear Allāh, by whom you demand of one another, and the ties of kinship. Indeed Allāh is ever, over you, a Watcher.” [Qurʾān, 4:1]
forms with direct divine involvement and breathing of the divine spirit, having a life that is protected by default from physical and verbal assault, thus prohibiting suicide, taking life without just cause, slander, backbiting, ridicule, defamation, insult; having freedom of conscience; and subjugation of the entire universe for the benefit and service of humans. Notwithstanding, there is a certain degree of subjectivity inherent in the concept of human dignity as the evidentiary texts do not define its precise parameters. In the absence of a provision in the evidentiary texts, the social norms of people of sound nature play a significant role in determining what those parameters are. Whilst regard to social norms is not an independent legal proof and has a rather circumstantial character, when the conditions of validity are satisfied, a ruling formed on the basis of social norm is, nevertheless, authoritative. Such ruling is, however, fluid and liable
to change when there is a change in the norm. This is further complicated by the accelerated pace of social change of modern times due to increased mobility in terms of socio-economic status and the unprecedented movement of people. Thus, it is quite possible to argue, that jurists who cited human dignity as a reason to prohibit the use of body parts did so on the basis of the norms of their times. However, organ transplantation is viewed in a totally different light, and, rather than a violation of human dignity, it is seen as the ultimate gift.

Another aspect of discussion is whether human dignity is an inviolable absolute preeminent right or whether it admits to a degree of permeability. A study of Islamic law manuals reveals that human dignity does admit to a degree of permeability in the event of competing rights, benefits and preferences. A few prominent examples are as follows:

**Live neonate:**

Classical jurists of all schools have discussed the case of a live neonate in the womb of a dead mother. The position of the Ḥanafi School is that, if it is known, or the dominant presumption is that the neonate is alive, the neonate will be removed after dissecting the mother’s abdomen as the lesser of two tribulations. Ḥanafi jurists recognised the violation of bodily integrity of the mother but viewed it as a lesser harm than allowing the death of the neonate through omission. In fact, Imām Muhammad described the removal of the neonate as the only option. The position of Imām Mālik, his student, Ibn al-Qāsim (d. 191/806) and...
other jurists in the Mālikī School is that the mother’s abdomen will not be dissected and the neonate will not be removed as the survival of the neonate is uncertain. Thus, the bodily integrity of the now dead mother cannot be violated for the neonate of uncertain outcome. In such a case, the mother will not be buried until the neonate has died, even if this delay leads to the spoiling of the mother’s body. This was regarded to be a lesser harm than violation of bodily integrity. However, if it is possible to extract the neonate through the normal birth canal then it should be removed. Saḥnūn (d. 240/854), a student of the direct students of Imām Mālik, and Asbagh (d. 225/840), a student of Ibn al-Qāsim, held that if gestation is advanced enough to make survival probable, the mother’s abdomen will be dissected and the neonate will be removed. This was also the preferred opinion of Ash-hab (d. 204/819), Al-Qāḍī ‘Abd al-Wahhāb considered the position of Saḥnūn as preferable to the position of Imām Mālik’s position, whilst some others considered it a contrary opinion. The position of the Shāfi‘ī School is...
very much the same as the Ḥanafī School. viz. if it is known, or the dominant presumption is that the neonate is alive, the neonate will be removed after dissecting the mother’s abdomen as the lesser of two tribulations. If the continued life of the neonate is uncertain, the more correct opinion in the school is that the mother’s abdomen will not be dissected, but burial will only take place after the neonate has died. A second opinion is that the mother’s abdomen will be dissected and the neonate will be removed. 118 The position of the Ḥanbalī School is similar to that of the Mālikī School. This position is reported directly from Imām Ahmad (d. 241/855) and is the opinion of the majority within the school. According to this opinion, dissection of the mother’s abdomen is prohibited. If there is a chance that the neonate is alive, the midwife should extract it through the birth canal. If that is not possible, or there is no female midwife, the neonate will not be extracted, but burial will take place only when the neonate has died. Ibn Qudāma (d. 620/1223) reasons that such a neonate does not normally survive and it is not entirely certain that it is alive in the mother. Thus, it is not permissible to violate the assured dignity of the mother for something that is merely speculative. The implication is that, if survival is assured, the mother will be dissected. Accordingly, Ibn Qudāma states, “If some of the child emerges alive and it is not possible to remove it without dissection, the area will be dissected.” Ibn Hubayra (d. 560/1165) holds that, if there is a dominant presumption that the neonate is alive, the mother’s abdomen will be dissected. Al-Mardāwi (d. 885/1480) describes this as the better opinion. 119 Modern
medicine has very much reduced the uncertainty surrounding the life and continued survival of a neonate in the womb of a dead mother. Hence, juristic opinion must necessarily move much further in favour of the permissibility of dissecating the mother.

The discussion above illustrates that human dignity is not inviolable when there is not a competing right of greater magnitude. The right to life of the living neonate allows the violation of the bodily integrity of its dead mother, as the right of the living neonate can be realised only by the violation of the bodily integrity of its host. This right to life holds more weight than the right of bodily integrity of its dead mother. However, this does not, of itself, translate into permissibility of homotransplantation, as, in the latter case, the recipient does not enjoy a right that competes directly with the right of bodily integrity of the donor.

**Ingested property**

Classical jurists of all schools have also discussed the case of ingested property within a dead body. In the Ḥanafī School, if one culpably ingests the property of another and then dies leaving sufficient estate to meet the price of the property ingested, the original proprietor will have recourse only to the estate. The body of the now dead person will not be dissected as the sanctity of the human is greater than the sanctity of property. If there is no estate, and the ingested item is liable to spoil, the original proprietor will have no recourse in this world but will be compensated in the next. If the property is not liable to spoil, such as gold and silver coins, there is then a difference of opinion. In one opinion, which is also reported from Imām Muhāmmad ibn ‘Abbād who added that he loses his [right to] dignity due to his tort. Al-Ḥaṣkāfī (d. 1088/1677) also upholds this position, and Ibn ʿĀbidīn (d. 1252/1836) appears to do the same. Al-Ṭūrī (d. 1295/1879) relates this opinion which is also upheld by Ibn al-Humām (d. 861 /1457), who adds that the ingested property within a dead body. In the Ḥanafī School, if one culpably ingests the property of another and then dies leaving sufficient estate to meet the price of the property ingested, the original proprietor will have recourse only to the estate. The body of the now dead person will not be dissected as the sanctity of the human is greater than the sanctity of property. If there is no estate, and the ingested item is liable to spoil, the original proprietor will have no recourse in this world but will be compensated in the next. If the property is not liable to spoil, such as gold and silver coins, there is then a difference of opinion. In one opinion, which is also reported from Imām Muhāmmad ibn ‘Abbād who added that he loses his [right to] dignity due to his tort. Al-Ḥaṣkāfī (d. 1088/1677) also upholds this position, and Ibn ʿĀbidīn (d. 1252/1836) appears to do the same. Al-Ṭūrī (d. 1295/1879).
Jurists of the Mālikī School have also taken conflicting positions. The position of primary texts like Mukhtasar Khālīl is that the body of the deceased will be dissected for abundant property. If the property is a gem that is precious or being held in trust, there are two contradictory reports from Ibn al-Qāsim. Ibn Ḥabīb (d. 238/853) opines that the deceased will not be dissected even if it is a gem worth a thousand dinars. Ibn Bashīr (d. 198/813) restricts the difference of opinion on property held in trust to when the deceased has left some estate. Otherwise, there is no dispute that the trust must be recovered. ‘Ilīlīsh (d. 1299/1882) describes the position of Sāḥnūn and Asbagh as the correct position citing Ibn Yūnūs (d. 451/1049) that the Prophet (peace and blessings of Allah be upon him) prohibited the wasting of property. Khālīl (d. 776/1374) himself reports that the dispute should be when the deceased had a valid reason to swallow the property; otherwise, there is no dispute that it will be removed. Jurists of the
Shāfiʿī School have likewise taken conflicting positions. If the gem is the property of a third party who demands recovery, it will be recovered after dissection of the deceased according to Abū al-Husayn (d. 377/987), Abū al-Husayn (d. 476/1083), and al-Nawawī, the latter of whom reports it as the most oft-reported position of the school by the earliest jurists. According to al-Rūyānī (d. 502/1108), al-Zarkashī (d. 794/1392) and al-Khaṭīb al-Shirbīnī (d. 977/1570), because it is now the property of the heirs, whilst according to al-Maḥmūdī (d. 843/1438), al-Qāḍī Abū al-Ṭayyib (d. 450/1058) and al-Ghazālī, the gem was destroyed in life and so it is not part of the estate.124 The Ḥan巴lfī School is very

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much similar in this regard. If the property of the third party is not liable to spoil, the position of the school is that it must be compensated for from the estate. If the estate cannot compensate, the deceased will be dissected and the property removed. Another opinion is that if the property of the deceased, the deceased will be dissected, and the property will be considered destroyed. Another opinion is that if the property is of sufficient value, it will be removed to avoid wastage and to protect the right of the heirs. If the body has decomposed in the grave, it may be removed without disturbing the deceased. If the deceased left debts that remain to be paid, the correct position is that the property will be removed.125

The discussion above also illustrates that a large number of jurists across all schools did not consider human dignity to be inviolable in the event of a competing property right of sufficient magnitude. Notwithstanding the nuances in their various positions, in certain

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circumstances, the right of the living to the ingested property did allow violation of the bodily integrity of the deceased; particularly if the right of the living could only be realised thereby. However, this too does not, of itself, translate into permissibility of homotransplantation, whether autosarcophagy or eating the flesh of a third party, even if the third party gave consent or was already deceased. Similarly, the opinion of Imām Mālik and the adopted position of the Mālikī School is that anthropophagy is not permitted, even if abstention leads to death. The Mālikī School have also cited human dignity. However, the Tunisian Mālikī Jurist, Muhammad ibn 'Abd al-Salām (d. 739/1348) judged the opinion of permission to be sound, whilst, according to al-Qurṭubī, Ibn al-'Arabī (d. 543/1148) allowed it if it is established that it will save life. The Shāfi‘ī School, on the

Survival anthropophagy

Classical jurists of all schools have also raised the issue of anthropophagy when such remains the only recourse for survival. Jurists of the Hānafī School cited human dignity and did not allow survival anthropophagy, whether autosarcophagy or eating the flesh of a third party, even if the third party gave consent or was already deceased. Similarly, the opinion of Imām Mālik and the adopted position of the Mālikī School is that anthropophagy is not permitted, even if abstention leads to death. The Mālikī School have also cited human dignity. However, the Tunisian Mālikī Jurist, Muhammad ibn 'Abd al-Salām (d. 739/1348) judged the opinion of permission to be sound, whilst, according to al-Qurṭubī, Ibn al-'Arabī (d. 543/1148) allowed it if it is established that it will save life. The Shāfi‘ī School, on the
other hand, adopts a very liberal position on survival anthropophagy. It allows funerary anthropophagy arguing that the dignity of the living is more pressing than that of the dead. Equally, if the life of the third party is not protected in law, such as in the case of a belligerent enemy or over whom the individual has the right of requital for murder, survival anthropophagy is permitted. In certain cases, permission for survival anthropophagy is with general agreement of the jurists of the schol. Whilst in others, it is with a difference of opinion. Autosarcophagy is not permitted without any difference of opinion if the probability of losing life through autosarcophagy is equal to or greater than the risk to life in abstention. Otherwise, autosarcophagy is permitted according to the sound opinion in the school. However, survival anthropophagy is not allowed by general agreement from a living person who enjoys a life protected in law. The Ḥanbalī School does not allow autosarcophagy as...
survival in such case is uncertain. If the life of the third party is protected in law, survival anthropophagy is not permitted by general agreement of the school. If the life of the third party is not protected in law, and by a fortiori extension, funerary anthropophagy is permitted according to the preponderant opinion. Funerary anthropophagy from one who did enjoy a life protected in law was not permitted in the dominant opinion of the school, although a number of jurists of the school did deem it to be permissible as the dignity of the living is more pressing than that of the dead.129

The discussion above illustrates that jurists of the Shāfiʿī School and, to a lesser extent, the Ḥanbalī School did not consider the inviolability of human dignity to be absolute when faced with survival; particularly so when the life of the third party is not protected in law. Ibn ʿAbd al-Salām and Ibn al-ʿArabī of the Mālikī School also expressed similar sentiments. Permissibility of survival anthropophagy, according to these jurists at least, would a fortiori allow homotransplantation if it was the only recourse to survival, as, in the latter case, the human body part is not consumed. However, it does not translate, of itself, into permissibility of homotransplantation if it is not the only recourse to survival.

Right of requital

The penal law of Islam allows for equal retribution against the offender in cases of murder130 and bodily injury131 and is expressly stated in the Holy Qurʾān. This allows for the protection of the living person's inviolability of human dignity.

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of society in general, curbs vindictive violence and limits the punishment exacted against the offender. All four jurisprudential schools are agreed on equal punishment in principle, although there is some disagreement in certain areas of application. Notwithstanding, this illustrates that inviolability of human dignity of the offender in this case is not absolute when there is a competing right of the injured party.

It is thus clear from the above examples that human dignity is not an inviolable absolute right that does not admit to a degree of permeability. Rather, when faced with a competing right of greater magnitude or a property right of sufficient magnitude, human bodily integrity can be violated. This is congruent with the legal maxim: “necessities permit the prohibited provided the necessities are not lesser than the prohibited.” and other related legal maxims variously expressed as: “The greater harm is removed by the lesser harm.” “When two harms or evils are in mutual conflict the greater of the two in harm is given consideration by committing the lesser of the two.” and “He will choose the lesser of two evils.”

**Impurity of the excised body part**

One reason cited to prohibit the use of human body parts is that it involves the transplant of that, which when removed, is rendered impure. However, there are two reasons why I believe this cannot be a reason to prohibit homotransplantation. Firstly, the majority opinion is that the excised body part is actually pure. Thus, the relied upon opinion in the Mālikī

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“And We prescribed for them in it [Torah] that the life is for the life, and the eye is for the eye, and the nose is for the nose, and the ear is for the ear, and the tooth is for the tooth, and wounds are retaliation.” [Qurʾān, 5:45]

“And there is life for you in retaliation, O people of understanding, that you may abstain [from sin].” [Qurʾān, 2:179]

“...And We prescribed for them in it [Torah] that the life is for the life, and the eye is for the eye, and the nose is for the nose, and the ear is for the ear, and the tooth is for the tooth, and wounds are retaliation.” [Qurʾān, 5:45] (عرج)
the more correct position in the Shafi'i School, and the position of the Ḥanbalī School is that an excised body part is pure. The Ḥanafī School, however, considers an excised body part that has flowing blood to be impure, but not bone, teeth and hair according to the correct position. In addition, as mentioned earlier, latter Ḥanafī jurists describe an excised body part as being pure for the person from whom it was excised, which represents a reconciliation of the conflicting opinions within the school.

Secondly, the use of an impure substance for therapeutic purposes is permissible in cases of extremis according to many notable jurists of the Ḥanafī School. This is the adopted position within the school and remains the favoured opinion amongst contemporary Ḥanafī jurists. It is the opinion of the authors of al-Nihāya, al-Tahdhib and al-Dhakhira, Qāḍī Khān (d. 592/1196), al-Marghīnānī (d. 593/1197) in al-Tajnīs, al-Ḥāṣkafī, and Ibn ʿĀbidīn.
It is narrated from 'Ā’isha that the Messenger of Allah (peace and blessings of Allah be upon him) said, ‘Breaking the bones of the dead is like the breaking of it whilst alive.’”

[Muṣannaf ‘Abd al-Razzāq]

The same narration is reported with an addition in the text:

“It is narrated from 'Ā’isha that she heard the Prophet (peace and blessings of Allah be upon him) saying, ‘Verily, breaking the bones of the dead whilst dead is like the breaking of it whilst alive.’”

[Muṣannaf ‘Abd al-Razzāq]

It is argued that this provides respect for human dignity applies equally to both the living and the dead. It is prohibited to break the bone or excise the body part of a live person, except where this has been permitted by the law. Equally, it is prohibited to do the same for a dead person.

However, the response to this is that this Ḥadīth relates to when the action is with deliberate disrespect or ill intent. The background to the incident in the Ḥadīth, as explained by Imām Jalāl al-Dīn al-Suyūṭī on the authority of the Companions, Jābir is that the Prophet (peace and blessings of Allah be upon him) sat at the edge of a grave with a group of his companions when a gravedigger removed a bone from either the shin or the arm and set about to break it. The Prophet (peace and blessings of Allah be upon him) said, “Do not break it, for your breaking of it when dead is like your breaking of it when alive. Rather, bury it to one side of the grave.”

The Ḥadīth commentator, al-Ṭībī (d. 743/1343) states in his commentary on Mishkāt al-Maṣābīḥ, “In here is an indication that respect for the dead is desired in all that is mandatory like its respect when alive and its denigration is prohibited just as in life.” Thus, the explicit meaning of the Ḥadīth provides for the prohibition of deliberate denigration of the human body, whether alive or dead. In homotransplantation, there is no intent to denigrate by any party. On the contrary, altruism and beneficence are the underlying motives, and the procedure is performed in a clinical setting with all the normal care and respect.
Furthermore, in the event of mutually conflicting harms, the greater of the two harms is given consideration by committing the lesser of the two. The harm in the violation of human bodily integrity in human organ procurement and transplantation is, arguably, less than the harm in loss of life or bodily function of the potential recipient.

**Hadiths prohibiting the use of [human/non-human] hair extensions**

Another reason cited to prohibit the use of human body parts is the Hadiths prohibiting the use of hair extensions.

“It is narrated from ‘Ā’ishah that a girl from the Anṣār married and that she became sick causing her hair to fall out. So they intended to join [hair] to her. So they asked the Prophet (peace and blessings of Allah be upon him) who said, ‘Allah has cursed the woman who joins [to her or someone else’s] hair and the woman who asks to join [to her hair].’”

[al-Bukhārī]

“It is narrated from Asmā’ bint Abī Bakr that a woman came to the Prophet (peace and blessings of Allah be upon him) and said, ‘O Messenger of Allah! I have a newlywed daughter who has come out with pustules and so her hair has fallen out. Should I join to it?’ He said, ‘Allah has cursed the woman who joins [to her or someone else’s] hair and the woman who asks to join [to her hair].’”

[Muslim]

It is contended that this provides for the prohibition of the use of human body parts even when there is no disrespect in the process of retrieval.

However, jurists have differed in their approach to this reported prohibition of extensions to hair. Jurists of the Ḥanafī School prohibit the use of human hair citing the obvious meaning of the Hadith text, and reasoning that every part of the human body enjoys dignity, which is debased by its use. Ibn ‘Abīdīn has also suggested deception as a possible reason. Nonetheless, there is also one report from Imam Muḥammad that the use of human hair is permissible, as the Prophet (peace and blessings of Allah be upon him) is reported to have shaved his head and distributed his hair amongst his companions from which they used to seek blessing. However, this report has not been received with acceptance in the school, as the distribution was for seeking blessing, not for use. The Ḥanafī School does, however, allow the use of hair extensions and braids using animal or artificial hair, as this is a form of permissible adornment.

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146 al-Bukhārī, al-Radd, 1/291, vol. 4, signed by al-Mālikī, dated 347H.
147 Muslim, al-Insān, 1/431.
148 Fatāẉa al-ʿAlām, vol. 20, signed by al-Mālikī, dated 347H.
The Mālikī School prohibits the use of human hair. Imām Mālik himself extends the prohibition to anything that is intended to resemble hair, whether animal or artificial. The early Mālikī jurist, al-Ṭabarī (d. 498/1105) and a group of scholars. Others, like Ibrāhīm al-Nakhaʿī (d. 96/715), have opined that placing hair on the head is permissible; it is only joining that is prohibited. Some have said that all of these forms are permissible. Al-Qaḍī ʿIyāḍ then concludes, “As for fastening coloured silk ribbons, so that is not of joining and nor is its intent. It is rather for beauty and embellishment, just as it is fastened around the waists and jewellery is tied around the necks and the hands and feet are adorned with it. A further understanding is that this is prohibited, whether at a time of necessity or otherwise, for the newlywed and for others, and that it is from amongst the major sins because the actor has been cursed.”

The Pashto translation:

"ولو شعر الأناقة قال: «لا يوجد شعر الإنسان إلا شعر الأдерم والأناقة إلا شعر الأدرم، وإنما يشرب في إنشاء الأناقة وهو شعر الأدرم. إنما يكون شعر الأدرم في أمر ما ولي ونتجذب بخواص الشعر وهو شعر الأدرم، فإنما يكون بشعر الشعر وهو شعر الأدرم. لاحظ أن الشعر الإنسان من أن يُعِدَّ شعر الأدرم في أمر ما وكيف، وإنما يكون في أمر ما. فإنما يكون شعر الأدرم في أمر ما. وإنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر وهو شعر الأدرم، فإنما يكون كثرة الأناقة. إنما يكون بشعر الشعر هو
being anomalous and more resembling of the Literalist School, whilst he describes the position taken by Ibrāhīm al-Nakhaʿī as pure literalism and a disregard of the context. He rejects outright the position of absolute permission, describing it as definitively void. Al-Qāḍī `Abd al-Wahhāb and Ibn Rushd (d. 595/1198) specifically identify deception as the ratio legis, whilst al-Qarāfī (d. 684/1285), after citing Ibn Rushd, states, “I have not seen for the Mālikī and Shāfiʿī and other jurists in the identification of the effective cause besides deceiving the husbands in order to increase the dowry.” However, al-Qarāfī questions this causation as the prohibition remains even when the husbands are aware and also is prohibited. Zarrūq (d. 899/1493) also alludes to this.

Al-Qarāfī concludes, “And that which is in the Ḥadīth of changing the creation of Allāh, I have not understood it, for verily change for the sake of beauty is not reprehensible in the law, such as circumcision, clipping the nails and hair, dying with henna and dying the hair etc.” Notwithstanding, deception is the dominant theme in the deliberations of the Mālikī School with the false hair, itself, being named deception. When there is no intention to give the perception of natural hair, such as coloured forelocks or coloured silk ribbons, numerous jurists of the school have come to hold it to be permissible.
The Shafi'i School also, unanimously prohibits the use of human hair citing the generality of the Hadith text and impurity. Pure non-human hair is prohibited for a spinner according to the correct opinion in the school, and permitted for a married woman with the permission of her husband according to the more correct opinion in the school. Despite recording it as the more correct opinion of the school, al-Nawawi states, “The opinion of one who opines prohibition without exception is stronger due to the obvious generality of the sound Hadiths.” Al-Ghazālī, though, refers to the more correct opinion of the school as the more logical of two viewpoints. Deception of a prospective suitor or a husband is another cited reason for prohibition.\(^{158}\)

ول شهوه ناجح النحو على الرسالة: ويبني النساء عن وصل الشعر وعن الوشم. إذا خص النبي الساءلا للذکر بغير من ذلك أكثر من الرجال، ولا إذا فحكمه سواء.

وظهر كلام الفقهاء أن لم يجب على في الرجال القول بغير الكلم. وأظهر أن النساء والرجال في النهي سواء. وعض البصري أن لا يجوز الرجول أن يضروها وسموعه. بل حينما خصص النبي الساءلا للذکر بغير من ذلك أكثر من الرجال، ولا إذا فحكمه سواء.

والشولا: قال الوهاب: وقال ذلك أن نصري وعصر الحلي، وذلك غزارة. [باب في الفطرة ونهاية وحل الشعر والشم والموارد] 

والشولا: قال الذهبي: في مورد هذه من غير العروم ونغير الحلي، وذلك غزارة. [باب في الفطرة ونهاية وحل الشعر والشم والموارد] 

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There are a range of opinions in the Hanbali School in relation to the use of human hair extensions. The correct opinion in the school is prohibition. However, a number of jurists in the school have described it as permissible but reprehensible. Effectively, the Ḥadiths have been interpreted to provide reprehensibility. A further opinion is that it is permissible with the permission of the husband. The use of animal hair is also prohibited according to the correct position in the school. However, here too, a number of jurists in the school have described it as permissible but reprehensible. The use of non-hair extensions is also reprehensible on account of the generality of the Ḥadith text. Imām Ahmad himself is reported to have considered any form of extension as reprehensible, whether human, wool, or other. He is reported to have considered braids from other than human hair to be permissible if they were tied on but not joined on. Ibn Qudāma opines, “The obvious understanding is that the prohibited is only the joining of the hair with the hair because, in it, deception is the use of the hair of a dislocated imperfection. The use of animal hair is also prohibited on account of the generality of the Ḥadith text.”
In summary, the Ḥanafī School cites the obvious meaning of the Ḥadīth text, human dignity and deception; and the Ḥanbalī School cites the generality of the Ḥadīth text and deception.

A study of the various Ḥadīths related to the prohibition of hair extensions reveals that the Ḥadīths may be categorised as follows:

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1. Ḥadīths that do not mention a context nor allude to a *ratio legis*. They simply state that Allah or the Prophet (peace and blessings of Allah be upon him) has cursed the woman who joins [to her or someone else’s hair] and the woman who asks to join [to her hair]. Ḥadīths of this category have been reported from ‘Ā’isha¹⁶⁰, Asmā’ bint Abū Bakr¹⁶¹, Ibn ‘Umar¹⁶² and Abū Huraira¹⁶³ and others.

2. Ḥadīths that mention a context. ‘Ā’isha¹⁶⁴ and Asmā’ bint Abū Bakr¹⁶⁵ have reported Ḥadīths of this category; two of which have been mentioned above. In all of their narrations, the context is of a young newlywed whose hair had fallen out due to illness. Her mother/relatives wish to resort to hair extensions. In one narration, the husband wishes for her [to be with him]¹⁶⁶, which suggests that the marriage is yet to be consummated. In some narrations, the hair extensions are at the insistence of her husband.¹⁶⁷ In one report,

“It is narrated from ‘Ā’isha that a woman from the Anṣār married her daughter and her hair then fell out. So she came to the Prophet (peace and blessings of Allah be upon him) and mentioned that to him. So she said, ‘Her husband has ordered me that I should join in her hair.’ So he said, ‘Indeed, the women who join [to her or someone else’s hair] have been cursed.’”¹⁶⁸ [Al-Bukhārī]
3. Ḥadīths that allude to a *ratio legis*. Ḥadīths of this category are reported from Mūʿāwiya.

“Saʿīd ibn al-Musayyab narrated that Muʿāwiya came to Medina the last time he came there. So he delivered a sermon to us and took out a tuft of hair. He said, ‘I did not think that anyone did this [used false hair] besides the Jews. Verily, the Prophet (peace and blessings of Allah be upon him) called it untruth/falseness.’” [Al-Bukhārī]\(^{169}\)

The same Ḥadīth is also reported by Muslim (d. 261/875)\(^{170}\) and others.\(^{171}\) The categorisation of the use of false hair as *al-zūr* - untruth/falsehood is an obvious allusion to deception, and thus deception constitutes the *prima facie ratio legis*. This is precisely what al-Qādī ʿAbd al-Wahhāb and Ibn Rushd of the Mālikī School specifically identified. In addition, al-Khaṭṭābī (d. 388/996) states in *Maʿālim al-Sunan*,

“And ‘the women who join’ are those who join their hair with the hair of other women. They intend thereby to lengthen the hair. They give the impression that that is of their original hair. Sometimes the women is thin haired and of little hair, or her hair is reddish, and so she joins on to her hair black hair, and thus that is untruth and a lie, and so it was prohibited. As for braids, the people of knowledge have granted dispensation in them. And that is because deception does not happen for them, for one who looks at them does not doubt that that is artificial.”\(^{172}\)

The context of the newlyweds reported from ʿĀʾisha and Asmāʾ bint Abū Bakr also lends strength to this identification of effective cause. Whilst it is true that, in some narrations, the hair extensions are at the insistence or instruction of the husband, and so this points away from deception being the effective cause, a possible response to this is that the Prophet (peace and blessings of Allah be upon him) maintained a firm stance, despite the absence of deception in this case, in order to discourage the practice so that prospective suitors would not be deceived.

4. There is yet another category of Ḥadīths reported from Ibn Masʿūd that is of interest. The Ḥadīths of this category have been cited by a number of jurists including Ibn Rushd, al-Qarāfī, al-Wansharīsī (d. 914/1508) and Zarrūq.\(^{173}\) Al-Bukhārī (d. 256/870) has recorded the Ḥadīth as follows:

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It is narrated [by Alqama] from Abdullāh [Ibn Masʿūd], he said, ‘Allah has cursed the female tattooists, the women who get tattooed, the women who remove facial hair, and the women who make spaces between the teeth for beauty, the changers of the creation of Allah.’ So that reached a woman from Banū Asad referred to as Umm Yaʿqūb. So she came and said, ‘Verily, it has reached me that you have cursed such and such women.’ So he replied, ‘Why should I not curse those whom the Messenger of Allah (peace and blessings of Allah be upon him) has cursed and those who are [cursed] in the Book of Allah?’ So she said, ‘I have indeed read between the two covers [of the Book of Allah], but I did not find in it what you say.’ He said, ‘If you had indeed read it you would have found it. Did you not read: “And whatsoever the Apostle gives you, so take it, and whatsoever he forbids you, so abstain [from it].”’ She replied, ‘But of course!’ He said, ‘Verily, he forbade it.’” [Al-Bukhārī]

Muslim has recorded the same Ḥadīth as follows:

“It is narrated [by Alqama] from Abdullāh [Ibn Masʿūd], he said, ‘Allah has cursed the female tattooists, the women who get tattooed, the women who remove facial hair, and the women who make spaces between the teeth for beauty, the changers of the creation of Allah.’ So that reached a woman from Banū Asad referred to as Umm Yaʿqūb and she used to recite the Qurʾān. So she came to him and said, ‘What is the statement that has reached me from you that you have cursed the female tattooists, the women who get tattooed, the women who remove facial hair, and the women who make spaces between the teeth for beauty, the changers of the creation of Allah?’ So Abdullāh replied, ‘Why should I not curse those whom the Messenger of Allah (peace and blessings of Allah be upon him) has cursed and those who are [cursed] in the Book of Allah?’ So the woman said, ‘I have indeed read what is between the two covers of the Book but I did not find it.’ So he said, ‘If you had indeed read it you would have found it. Allah, exalted and majestic is He, said, “And whatsoever the Apostle gives you, so take it, and whatsoever he forbids you, so abstain [from it].”’” [Muslim]

Whilst the jurists cited above have prefixed these Ḥadīths with mention of the woman who joins [to her or someone else’s hair] and the woman who asks to join [to her hair], there is no actual reference to them in these Ḥadīths. The same is true for the versions reported by ʿAbd al-Razzāq (d. 211/829) in Ibn Māja (d. 273/887).

[174] Muslim

[175] Muslim

[176] Al-Bukhārī

[177] Muslim

[178] Muslim

[179] Muslim

[180] Muslim
Nasaʾī (d. 303/915) and Ibn Ḥibbān (d. 354/969), with al-Nasaʾī also recording three narrations via the channel of Qabīṣa ibn Jābir (d. 69/689) as opposed to Ṭabqama (62/681). They too do not refer to the woman who joins [to her or someone else’s hair] and the woman who asks to join [to her hair]. Abū Dāwūd (d. 275/889) has reported this Ḥadith through two channels. In the channel of Ṭabqama ibn Abū Shayba (d. 239/853) there is no mention of either the woman who joins [to her or someone else’s hair], while even when there is a stated, more obvious cause of deception. Hair extensions effect no lasting change, and thus designating them as a change in creation appears to be misplaced. And Allah knows best.

Deception is not relevant to the issue of homotransplantation and so the prohibition on hair extensions cannot be extended to homotransplantation on this basis. At most, it may be said that [human/anym form of] hair extensions are prohibited as they are specifically identified by the Ḥadith text, and even when there is no deception, the prohibition of hair extensions remains. Additionally, hair extensions are an embellishment, whereas the transplant of human organs is to save life or restore vital bodily function. If human hair extensions are deemed to be relatively frivolous and an affront to human dignity, the same, arguably, does not necessarily endure in the case of saving life or restoring vital bodily function.
One reason cited to prohibit the use of human body parts is that it involves mutilation (muthla) of the donor. Lexically, muthla (also mathula) connotes punitive excision of the nose, ears, genitalia or other limbs, and takes its lexical significance from mathal, which connotes being made an example of.\(^{182}\) There are express Ḥadiths that provide for the normative prohibition of muthla in the context of war and mutual hostilities\(^ {183}\). However, there is a difference of opinion amongst the jurists as to whether this prohibition amounts to unlawfulness or blameless abomination. Al-Qāḍī ‘Iyāḍ has recorded both opinions,\(^ {184}\) whilst al-Nawawī, after citing al-Qāḍī ‘Iyāḍ,\(^ {185}\) appears to be inclined towards abomination.\(^ {186}\) There is also further detail as to whether the prohibition is absolute or qualified. The opinions in the Ḥanafi School are that mutilation is normatively unlawful\(^ {187}\) unless it is retaliation in kind, incidental or serves a valid purpose.\(^ {188}\) Al-Mawṣūlī (d. 683/1298) opines that muthla is permissible before capture, as it serves to subdue and inflict greater harm upon
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the enemy. 189 Al-Zaylaʿī (d. 743/1348) describes this opinion as good - hasan and has likened it to the use of fire. 190 Al-Ḥaṣkafī also upholds al-Mawṣili’s position. 191 Ibn al-Humām opines that muthla is permissible if it ensues during the dual of a appears to be inclined towards retaliation in kind not being muthla. If the offender has caused several bodily injuries to numerous persons, the law of equal retribution will be enforced for each individual even if it results incidentally in the mutilation of the offender. 192 The Mālikī School also considers mutilation of a captive to be unlawful, unless it is retaliation in kind. Mutilation that ensues in the heat of battle is permitted. 193 The Shāfi’ī School considers

الله تعالى علیه السلام ورسالت: [رسالت الله ﷺ] - 192

ب) اگر تلفات موسمی آیین یافته یا نداشته باشد، به هر حال فاقدی قانونی ندارد. بنابراین، بزرگی یافته یا نداشته، به هر حال، یافت در پژوهش بنیان ندارد. بنابراین، بزرگی یافته یا نداشته، به هر حال، یافت در پژوهش بنیان ندارد. بنابراین، بزرگی یافته یا نداشته، به هر حال، یافت در پژوهش بنیان ندارد. بنابراین، بزرگی یافته یا نداشته، به هر حال، یافت در پژوهش بنیان ندارد. بنابراین، بزرگی یافته یا نداشته، به هر حال، یافت در پژوهش بنیان ندارد.

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mutilation of a captive to be unlawful, whilst jurists of the Ḥanbalī School describe it as both abominable and impermissible, unless it is retaliatory in kind or for strategic interests. It is thus clear that muṭḥla is a measure in which the underlying intent is punitive and which, according to the majority, is normatively prohibited, but allowed i

in the interest of achieving a higher objective, such as victory in warfare, in the pursuit of the right of requital or the interest of parity, such as retaliation in kind. However, in homotransplantation, there is no punitive intent. On the contrary, altruism and beneficence are the underlying motives, and in light of the legal maxim: al-imār bi maqāṣidīhā – the actions are [judged] by their purposes. Homotransplantation should, arguably, be judged according to the underlying intent and should thus be deemed an altruistic deed, rather than muṭḥla. This is also supported by the citation of Ibn Sayyid al-Nāṣ (d. 734/1349), which Ibn al-Humām also cites and appears to be inclined towards, in which Ibn Sayyid al-Nāṣ draws a distinction between muṭḥla and muṭḥla being that which is initial without being penal.
Ibn Ḥībbān and Ibn Ḥazm (456/1071) also drew a clear distinction between requital and muthla several centuries earlier. Even if punitive intent is not afforded due regard, the principle remains, as discussed earlier, that in the event of mutually conflicting harms, the greater of the two harms is given consideration by committing the lesser of the two. The harm in the violation of human bodily integrity in human organ procurement and transplantation is, arguably, less than the harm in loss of life or bodily function of the potential recipient.

Changing the creation of God – taghyīr li khalq Allah

Another reason cited to prohibit the procurement of human body parts is that it involves changing the creation of God, the prohibition of which is founded in a verse of the Holy Qur’an and sound Ḥadīths.

“And I will most certainly mislead them; and I will most certainly fill them with empty hopes; and I will most certainly order them and so they will most certainly slit the ears of the cattle; and I will most certainly order them and so they will most certainly alter the creation of Allah. And whoever takes Satan as a guardian instead of Allah, so he has certainly suffered a manifest loss.”[Qur’an, 4:119]

Al-Ṭabarî (310/923) has recorded a number of interpretations of “and so they will most certainly alter the creation of Allah.”

- This refers to changing the creation of animals through castration. [Ibn ʿAbbās, Anas ibn Mālik, Al-Rabîʿ ibn Anas, ʾIkrīma, ʿAbū Šāliḥ] Ibn Kathīr also adds Ibn ʿUmar, Saʿīd ibn al-Musayyab, ʿAbū ʿIyāḍ and Sufyān al-Thawrī.
- The creation of Allah means the religion of Allah. [Ibn ʿAbbās, Ibrāhīm al-Nakhaʿī, Mujāhid, ʾIkrīma, Qatāda, al-Ḥasan al-Baṣrī, al-Qāsim ibn ʿAbū Bazza, al-Suddī, al-Ḍāḥkhān] Ibn Kathīr also adds al-Ḥakam and ‘Atāʿ. Al-Rāzī (d. 606/1210) also adds Saʿīd ibn Jubayr and Saʿīd ibn al-Musayyab and explains this as changing the primordial nature upon which each human is born or changing the lawful to the unlawful and vice versa.
and so they will most certainly alter the creation of Allah\textsuperscript{68} through washm – tattooing. [Al-Hasan al-Baṣrī] Al-Rāzī categorises this opinion as altering all situations related to the outward appearance,\textsuperscript{206} which also includes castration.

Al-Jaṣṣāṣ (d. 370/942) also mentions the same three opinions\textsuperscript{207} as al-Ṭabarī. Al-Ṭabarī then decrees the interpretation of “the religion of Allah” to be the most worthy of being deemed correct, which then includes all that is prohibited, including prohibited cases of animal castration and tattooing.\textsuperscript{208} However, the majority opinion is that the beneficial castration of animals is permitted. The Hanafi School permits the castration of animals, when it serves a purpose, but not humans. The use of a branding iron is also permitted. Similarly, ear piercing for females is permitted and cauterisation is permitted for therapeutic reasons.\textsuperscript{209}

The Mālikī School takes a similar position in relation to castration with the exception of the horse, unless it becomes rabid. Branding too is permitted, but the face should be avoided.\textsuperscript{210} Ear piercing for females is also permitted. Ibn al-ʿArabī described the use of the branding iron:
iron and the wounding of the sacrificial animal in Ḥajj as exceptions to altering the creation of Allāh.212 The Shafiʿi School allows castration of only legally edible animals when in their infancy; otherwise, it is unlawful. Circumcision, branding and, when needed, cauterisation are exceptions to the prohibition.213 Ear piercing for females is also permitted in the relied upon opinion.214 Imām Ahmad is reported to have held the castrations of animals as abominable, except when there was a fear of loss. Al-Qāḍī Abū Yaʿlā (d. 458/1066) and Ibn ʿAqīl (d. 513/1120) of the Hanbali School regarded it as unlawful, as in the case of humans. Branding too is prohibited, unless it is required for the safety of females is permitted in the correct opinion of the school.216

The prohibition of altering the creation of God is also adduced from the sound Ḥadīths in which the female tattooists, the women who get tattooed, the women who remove facial hair, the women who have facial hair removed, and the women who make spaces between the teeth for beauty are cursed. These Ḥadīths have been reported by al-Bukhārī, Muslim, ʿAbd al-Razzāq, Ibn Māja, al-Nasaʾī, Abū Dāwūd, Ibn Ḥibbān [and others] with variations in wording, and have been referred to earlier under the discussion of hair extensions. The Ḥadīths conclude with the phrase “the changers of the creation of Allāh” or similar. The wording of Muslim, for example, is as follows:

"It is narrated by 'Alqama from 'Abdullāh [Ibn Masʿūd], he said, ‘Allah has cursed the female tattooists, the women who get tattooed, the women who remove facial hair, the women who have facial hair removed, and the women who make spaces between the teeth for beauty, and the changers of the creation of Allāh.’ … [Muslim]

212 Tafsīr Al-Ahwāzī, 4/249, Q. 2:272, 244, 245.
213 Al-Mughni, 8/289.
214 Al-Mughni, 8/291.
215 Al-Mughni, 8/296.
216 Al-Mughni, 8/299.
Al-Ṭībī (d. 743/1343) opines that “for beauty” is possibly related to all practices mentioned [viz. tattooing, removing facial hair and making spaces between the teeth], although the most apparent association is with the last practice.217 Mullā Ḭafī al-Qārī (d. 1014/1606)218 and al-ʿAzīm ʿābdī (d. 1329/1910)219 also concur. Ibn al-Malak (854/1450) states that all the attributes compete in their association with “for beauty”.220 Badr al-Dīn al-ʿAynī (d. 855/1360), however, positively associates it with “the women who make spaces between the teeth”.221 Sheik ʿAbd al-Ḥaq al-Dehlavi (d. 1052/1642) also does the same, but acknowledges the possibility of an association with all practices mentioned, and that that is more appropriate to the meaning, even if the first is more apparent in view of the wording.222 Al-Sindhī also mentions both possibilities.223 Al-Nawawī opines that this indicates that the prohibition is when this is done in the pursuit of beauty. If one has to resort to this for treatment or a tooth defect etc., there is then no blame.224 Al-Ṭībī,225 Ibn Ḥajar (d. 852/1449),226 al-ʿAynī,227 al-Sanūsī (d. 895/1490),228 Mullā Ḭafī al-Qārī,229 and al-Dehlavi230 also concur. The sum of this discussion is that, if [the final or all three of] these practices are not in pursuit of vain and frivolous aims, but for valid reasons of need, they are then permitted.

Ibn Ḥajar opines231 that “the changers of the creation of Allah” is an essential attribute for each of one who tattoos, removes facial hair or makes spaces between the teeth. Mullā Ḭafī al-Qārī232 and al-ʿAzīm ʿābdī233 make similar comments. Al-ʿAynī also makes the same
point asserting that this is why “the changers” have been mentioned [in the narration of al-Bukhārī] without the conjunction “and”, as each of these practices is a change of the creation of Allah, falsification and deception. However, this reasoning of al-ʿAynī does not hold up in light of the narration of Muslim, as “the changers” have indeed been mentioned with the conjunction “and” as can be seen above. Al-ʿAynī also acknowledges an opinion that “the changers” is associated with only the practice of making spaces between the teeth.234 Al-Bājī opines that this applies to when the change lasts. If the change does not endure, and is merely a form of adornment, such as antimony – kuhl and henna for females, then it is permitted in the opinion of Imām Mālik.235 Al-Qāḍī ʿIyāḍ states that some of our scholars have said that this prohibited practice that is the subject of warning is that which lasts, for that is changing the creation of Allah. As for that which does not last, such as the use of antimony, the people of knowledge attach no blame to it.236 The Shāfīʿi commentator, Ibn Raslān (d. 844/1440) also holds the same,237 whilst al-Sahāranpūrī (d. 1346/1927) of the Hanafi School cites this position.238 Al-Ṭabarī, however, adopts a very literal interpretation and prohibits any change in the pursuit of beauty to what the woman is born with. This includes filing otherwise straight teeth, shortening long teeth or removing teeth that are abnormally extra. Similarly, in al-Ṭabarī’s opinion, the removal of a bead, moustache and hair under the bottom lip, whether through shaving or cutting, is also prohibited. Al-Ṭabarī regards this to be changing the creation of Allah and the removal of abnormal facial hair to also fall under the prohibition of al-namās.239 Ibn al-Mulaqīn (d. 804/1401) also upholds the opinion of al-Ṭabarī.240 Al-Qāḍī ʿIyāḍ concludes from al-Ṭabarī’s position that, according to
al-Ṭabarî and those who hold this view, if one is born with an extra finger or limb, it cannot be excised, as this falls within changing the creation of Allah, unless the extra finger or tooth is a cause of suffering and pain. However, al-Dehlawî offers an alternative interpretation opining that "the changers of the creation of Allah" is an allusion to the effective cause of the prohibition and abomination. However, this does not necessitate that every change is unlawful, as it is not an effective cause of itself; the effective cause of prohibition and this is the *ratio legis* to the prohibition. Thus, the long and short of the issue is that the lawyer has permitted certain changes and proscribed others on account of the additional extension and abomination. In addition, al-Sahāranpūrî expresses his dissatisfaction with al-Ṭabarî’s position, arguing that the obvious understanding of changing the creation of Allah is that any animal created in its normal form is not to be changed, and not that what has been created abnormally, such as a bearded for women or an extra limb, cannot be changed and is rather changing the creation of Allah.

Notwithstanding, al-Ṭabarî’s position in relation to the removal of extra fingers and limbs finds favour in the Mālikî244 and Shāfi‘î245 schools. Imām Ahmad too is reported to have said that the additional finger will not be excised. In contrast, the Hanafi School allows the
excision of the additional finger or limb if the dominant presumption is that the procedure will be successful. Al-Ṭabarî does not, however, similar support in relation to his position on the removal of abnormal facial hair. The Ḥanafi School regards the removal of a beard, moustache and hair under the bottom lip for women to be preferable. Even the eyebrows may be tided up provided they do not resemble those of an effeminate.

The relied upon opinion in the Mālikī School is that the removal of such facial hair is mandatory and to fail to do so is muṭḥa. The Shāfiʿī School regards its removal to be preferable, whilst the Ḥanbalī School regards the shaving of it to be permissible, but not plucking on account of the obvious meaning of the Ḥadîth. Ibn al-Jawzî (d. 597/1200), however, permitted plucking reasoning that the prohibition was due to deception or being a specific trait of immoral women. Another opinion in the school is that it is permitted if the husband demands it.
The discussion above helps to inform the conclusion that the prohibition of changing the creation of God is not absolute but qualified. Some changes, such as male circumcision, removal of pubic hair and clipping of the nails are actually mandatory. Cosmetic changes that do not endure, such as the use of makeup, are permitted. The safe correction of abnormalities that cause physical suffering and pain is permitted in all schools, and permitted in the Ḥanafī School, even without physical suffering and pain. Enduring changes from the original norm, such as tattooing and filing the teeth, are prohibited unless the change is for therapeutic reasons, such as cauterisation. Removal of abnormal facial hair is preferable/permitted in the majority opinion and mandatory for females in the Mālikī School. Change practised universally by Muslims of sound nature, such as ear piercing, is permitted. Change that is practised by Muslims of sound nature in a [comparatively] limited geographical location, such as nose piercing, is permitted for the inhabitants of that [comparatively] limited geographical location according to Ḥanafī jurists.253 Shāfiʿī jurists, however, do not consider a limited practice of change, such as nose piercing, to be permitted, although they see no blame in the subsequent wearing of a nose ring.254 However, the phrase used by Shāfiʿī jurists of firqa qalīla – small section suggests that they considered the practice of nose piercing to be limited to a relatively small geographical area whilst the reality is quite different. Additionally, mutilation that ensues in battle, retaliation in kind, is incidental or serves a valid purpose is permitted in the majority opinion; beneficial castration of animals and the use of a branding iron are permitted in the majority opinion; and practices that are not in pursuit of vain and frivolous aims but rather for valid reasons of need are permitted. Thus, the long and short of the issue, as stated by al-Dehlawī, is that the lawgiver has permitted certain changes and proscribed others on account of the additional extension and abomination.

Homotransplantation is not a vain or frivolous, pursuit but a procedure founded on altruism and the desire to benefit others that restores vital bodily functions. Furthermore, if a prohibition of changing the creation of Allah is conceded in homotransplantation, then in the event of mutually conflicting harms, the greater of the two harms is given consideration by
committing the lesser of the two. The harm of changing the creation of the donor is, arguably, less than the harm in loss of life or bodily function of the potential recipient.

Self-ownership and property rights

The issue of self-ownership and property rights or rather, a lack thereof, is another reason cited to prohibit the donation of human body parts. The argument offered is that the human body is not property that can be made the subject of sale, and so cannot also be gifted, and that we do not have ownership of our bodies, and so do not have the right of disposal through sale, gift or bequest. The sale of a free person is prohibited by consensus,\(^{255}\) and so it is argued, that which cannot be sold cannot also be gifted, as expressed in the legal maxim: “That which the sale of is permitted, its gift is permitted, and that which is not is not, except in some situations.”\(^{258}\) Both al-Zarkashi\(^{260}\) and al-Suyūṭī,\(^{261}\) who cite this maxim, go on to discuss a number of exceptions.

Firstly, legal maxims are theoretical abstractions that express general rules that apply to most of their related particulars rather than absolute precepts that apply to all.\(^{258}\) This is aptly demonstrated by the full wording of the first maxim: “That which the sale of is permitted, its gift is permitted, and that which is not is not, except in some situations.”\(^{258}\)
Thus, it is arguable, that the donation of human organs is simply another exception to this maxim. Secondly, this particular maxim, in its full form at least, appears to be cited only by the Shafi‘i School for which al-Zarkashi also mentions three exceptions.

Thus, here too, it is also arguable, that the donation of human organs is simply another exception to this maxim. Thirdly, legal maxims are not, in themselves, binding principles, but rather indicative of recurring themes in the body of the law. Thus, these maxims alone, even if accepted as valid, are insufficient to effect a ruling of the impermissibility of donating organs. Furthermore, the sale of expressed human milk is subject to a difference of opinion across the four schools. In the Hanafi School, expressed human milk cannot be sold, even if it is that of a concubine, except in the opinion of Imam Abu Yusuf. The Malikis and Shafi‘i schools, however, allow the sale of expressed...
human milk and consider it to be analogous with the milk of livestock. Imām Ahmad is reported to have expressed his abhorrence at the sale of expressed human milk. Jurists of the Ḥanbalī School, however, have expressed opinions of both permmissibility and prohibition, with the majority and more correct opinion of the school being permission. One opinion also restricts the permission to concubines. The sale of male human milk is prohibited by agreement in the school. 268
Having explained the above, my own assessment is that the emphasis on the lack of self-ownership and the human body not being property is misplaced. Ownership, which is experienced in its most complete and recognisable form in moveable and immovable property, does not bring absolute right of disposal. On the contrary, one remains bound by a number of divine laws in the disposal of the property. e.g., one cannot lend or borrow on interest, gamble, squander or enter into commutative contracts involving gross uncertainty. Equally, stewardship does not equate to the absence of the right of disposal, such as in the case of an agent, guardian or executor, etc. Rather, here too, one remains bound by a number of divine laws. Thus, the actual issue is, what level of autonomy and authority does the individual enjoy over his person? The jurists discuss this under the exposition of the concept of rights.

In the Ḥanafī School, the contemporaries al-Sarakhsī (d. 483/1090) and al-Bazdawī (d. 482/1089) appear to be the first to present a coherent classification of the rules of law and the consequential obligations and duties around a set of rights. However, the almost identical sentence structure and exposition of both works lend credence to the idea that they may have relied upon an earlier work or benefited from the work of one another, but it is al-Bazdawī's work that received all the attention with subsequent commentaries. Both works classify the set of rights as follows:

1. Laws that are the exclusive rights of God;
2. Laws that are the exclusive rights of individuals;
3. Laws that comprise both rights but the rights of God are preponderate; and
4. Laws that comprise both rights but the rights of individuals are preponderate.

Later Ḥanafī scholars, such as al-Nasafī (d. 710/1308), al-Syghnāqī (d. 714/1312), al-Bukhārī (d. 730/1328), Saḍr al-Sharīʿa (d. 747/1346), al-Kākī (d. 749/1348), al-Taftāzānī (d. 792/1390), Ibn al-Malak (d. 854/1450), Ibn al-Humām and Ibn Ṭūlūbughā...
The rights of God relate to rights of public interest over which no one individual has an exclusive right. Their association with God is not on account of want, for God is above all wants, but rather to ennoble what is of huge significance, great benefit and widespread excellence. These rights cannot be cancelled or waived by anyone save God. These, in turn, are of eight types: (1) *ʿibādāt khāliṣa* - acts of pure devotion, such as faith, prayer, obligatory alms, fasting, *Ḥajj*, etc.; (2) *ʿuqūbāt khāliṣa* - perfect punishments, such as the prescribed punishments for adultery, theft, drinking wine, etc.; (3) *uqūba qāṣira* - imperfect punishments, such as depriving the killer of inheritance from the killed; (4) matters that revolve between devotion and punishment, such as *kaffārāt* - expiations; (5) acts of devotion with an element of *muʿūna* - impost, such as *ṣadaqa al-fitr*; (6) impost with an element of worship, such as *ʿushr* - tithe; (7) impost with an element of punishment, such as *khāraj* - land tax; and (8) *qāʿī bi nafsī* - the right that exists of itself, such as one-fifth of war booty, mines and buried treasures.

The exclusive rights of the individual represent that which relate to specific interests, such as the prohibition of appropriating the wealth of another, payment of bloodwit, compensation for destroyed or usurped property, etc. These are private rights designed to protect individual interest and are innumerable.

An example in the Ḥanafi School of that which comprises elements of both a right of the individual and a right of public interest over which no one individual has an exclusive claim.
and the latter right is also preponderate is the punishment for *qadhf* – slander. There is both a private interest and a public interest and, in this case, the public interest is preponderate. Consequently, the aggrieved party cannot waive the punishment for the offender or accept compensation, it is not inherited and the state is bound to carry out the prescribed punishment.  

An example of that which comprises elements of both a right of the individual and a right of public interest over which no one individual has an exclusive claim and the former right is this time preponderate is the right of *qiṣāṣ* - requital in which the aggrieved party may pardon the offender or accept bloodwit.  

Jurists of the Mālikī School have expressed the classification of rights slightly differently. Al-Qarāfī presents a tripartite classification:  

1. The [exclusive] right of God, which he defines as a right that cannot be waived by the individual. This includes matters of private and public interest, such as the prohibition of ribā, gharar, gross uncertainty, intoxicants, theft, adultery, slander, murder, injury, etc.;  
2. The right of the individual, which he defines as a right that stands waived if the individual waives it, such as debts and receivables, otherwise every right of the individual is combined with the right of God in His instruction to render the right to whom it is due; and  
3. The right in which it is disputed as to whether the right of God or right of the individual is preponderate, such as in the punishment for slander.

Al-Kalābī (d. 741/1340) has also offered the same tripartite classification. Ibn al-Shāṭ (d. 723/1323) has upheld the basic classification by al-Qarāfī, although he has taken issue with some of the forms of expression, and citation of examples. Some of this is repeated by the jurists of the Mālikī School in as much as the latter right is also preponderate is the punishment for *qadhf* – slander. There is both a private interest and a public interest and, in this case, the public interest is preponderate. Consequently, the aggrieved party cannot waive the punishment for the offender or accept compensation, it is not inherited and the state is bound to carry out the prescribed punishment.  

An example of that which comprises elements of both a right of the individual and a right of public interest over which no one individual has an exclusive claim and the former right is this time preponderate is the right of *qiṣāṣ* - requital in which the aggrieved party may pardon the offender or accept bloodwit.

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90 Al-Qarāfī presents a tripartite classification: (1) The exclusive right of God, which he defines as a right that cannot be waived by the individual. This includes matters of private and public interest, such as the prohibition of ribā, gharar, gross uncertainty, intoxicants, theft, adultery, slander, murder, injury, etc.; (2) The right of the individual, which he defines as a right that stands waived if the individual waives it, such as debts and receivables, otherwise every right of the individual is combined with the right of God in His instruction to render the right to whom it is due; and (3) The right in which it is disputed as to whether the right of God or right of the individual is preponderate, such as in the punishment for slander.

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more recent Mālikī scholar, Muḥammad 'Alī ibn Ḥuṣain al-Makkī (d.1376/1948), who offers a quadripartite classification of obligation that ensues from the right of God and the right of the individual, and smoothens out any inconsistencies of al-Qarāfī as follows:

(1) Obligation of the exclusive right of God that does not admit to any waiver at all, such as the requirement of faith and the forsaking of disbelief;

(2) Obligation of the exclusive right of individuals over one another. They are exclusive in the sense that they can be waived by the individual, such as debts and receivables, but fall under the general divine instruction to render rights to whomever they are due. Thus, there is no right of the individual that is not also a right of God.

(3) Obligation of both aforementioned rights, but the preponderance of which is disputed. This includes the squandering of wealth through contracts of ribā, gharar and gross uncertainty, aimless destruction of property and the prohibition of theft. It also includes harming the intellect through intoxicants and lineage through adultery. The agreement of the individual to waive such right is no consequence of all.293

[293] The Arabic text has been translated to English as follows:

كُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَضَايْنِ. وَكُلُّهُ مِنَ الْأَمْرِ، وَكُلُّهُ مِنَ الْإِنْفَا
This quadripartite classification is, in substance, the same classification first presented by al-Sarakhsi and al-Bazdawi except for their third category. In the classification of al-Sarakhsi and al-Bazdawi, the right of God is preponderate in this third category, as is the position of the Hanafi School in relation to the punishment of slander, whilst in the Maliki classification, preponderence is subject to dispute in this category, which is actually recognition of the position of the Shafi`i and Hanbali schools and an opinion in the Maliki School.

Al-Shatibi (d. 790/1388) also offers a tripartite classification but different to that of al-Qarafi. He first explains that there is no legal injunction, positive or negative, that is free from the right of God in terms of devotion. What appears to be the exclusive right of the individual is actually not so, but is rather classified so by granting preponderance to the right of the individual in worldly laws. Equally, every legal injunction comprises a right of the individual, whether immediate or in the afterlife, as the sharia has been legislated for the interests of individuals. It is simply the convention of scholars to interpret the right of God to be that in which the obligated, logically or otherwise, has no choice, and to interpret the right of the individual to be that which relates to their worldly interests. Interests of the afterlife are amongst the rights of God.

Al-Shatibi then suggests actions, in terms of their relationship with the right of God and the right of the individual, are of the three kinds:

(1) Those that are the exclusive rights of God and are originally expressions of devotion.
(2) Those that comprise the right of God and the right of the individual, but the right of God is given preponderence. This ultimately returns to the first kind.
(3) Those that combine both rights, but the right of the individual is given preponderence.

If the two rights are aligned, there is no conflict. If the two rights are not aligned, and the right of the individual can be realised, the prohibition in favour of the individual is suspended. Similarly, if the owner of the right waives his right the prohibition is suspended.
In the Shafi’i School, al-Hiṣnī (d. 829/1426) presents a tripartite classification which appears to presuppose a perpetual conflict between the right of God and the right of the individual as follows:

1. That in which the right of God is given preference, such as all the mandatory devotions;
2. That in which the right of the individual is given preference as an expression of divine mercy, such as uttering words of apostasy under duress; and
3. That in which the preference is disputed amongst the jurists, for which he provides a list of examples.  

Jurists of the Hanbali School do not appear to offer an organised classification of the rights of God and the rights of the individual in the manner of particularly the Hanafis and also the Mālikis. However, Hanbali jurists do refer to both types of rights in their legal manuals.

The life and body of the individual combines both a right of the individual and a right of God [in terms of public interest over which no one individual has an exclusive claim]. The individual enjoys the right of disposal until such disposal conflicts with the right of God. The injunctions of *shariʿa* to prohibit and prescribe punishments for adultery, slander, drinking wine, etc., are all aimed at securing public interest, which, in the examples given, are in the form of protection of lineage, honour and intellect. Similarly, the legal injunctions to prohibit suicide, self-harm, murder and injury are aimed at the same. In fact, all of the injunctions of...
sharīʿa, both positive and negative, aim to uphold both types of rights, but where there is a mutual tension, the right of God [public interest] is preponderate. The question thus remains as to where public interest, which is a function of the balance of benefits and harms, lies in the issue of homotransplantation. As long as public interest is served and the benefits to the recipient outweigh the harms to the donor, homotransplantation cannot be deemed to be impermissible on account of a lack of self-ownership.

Blocking the means – Sadd al-Dharāʾiʿ

This refers to the doctrine of blocking the lawful means to an unlawful end before it actually materialises, and is invoked to argue that the legalisation of organ transplantation will lead to the exploitation of an already disadvantaged underclass, a commercial organ trade, and organ tourism. Thus, organ transplantation should not be legalised. The exploitation of a disadvantaged economic underclass was a concern expressed by the late Grand Mufti of Pakistan, Mufti Mohammad Shafi in 1967 in his treatise on organ transplantation. Abū al-Aʿlā Maudūdī used a slippery slope argument, concluding that legalisation would, eventually, result in nothing of the body being left to bury. I would make three observations in this regard.

Firstly, the doctrine of sadd al-dharāʾiʿ is not recognised by the Ḥanāfī and Shāfiʿī schools as a principle in its own right, and is rather subsumed by other principles, such as qiyās - analogical reasoning, istiḥsān - juristic preference and ‘urf - custom. It is the Ḥanbalī and, more particularly, the Mālikī schools that afford it recognition as a proof in its own right. Jurists, such as al-Qarāfī and al-Shāṭibī, conclude that the conceptual legitimacy of the doctrine is actually agreed upon, and it is, primarily, only the extent of application and the grounds that may be said to constitute the means that are disputed. Al-Zarkashī reports a similar sentiment from al-Qurṭubi. Abū Zahra (d. 1394/1974) also reaches the same conclusion.

Secondly, the Mālikī School has divided the means into three types based upon the probability of the lawful means leading to an unlawful end. According to al-Zarkashī’s report from al-Qurṭubi, if a lawful means definitely leads to an unlawful end, such means is not the subject of discussion, and is rather related to the principle of, “That, which there is no escape from the unlawful except through its avoidance, the commission of it is unlawful.” Similar to “That, without which the mandatory is not complete, is mandatory.” If a lawful means predominantly leads to an unlawful end, all four schools consider the means to be

301 I had wrestled with the decision to include this discussion in this paper, as, although I recognise it to be a legitimate concern for particularly countries within the developing world, it is not as relevant to the UK context and, as such, was not a concern for me. However, I have opted to include a brief discussion after a suggestion from a peer reviewer.


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unlawful. If a lawful means predominantly does not lead to an unlawful end, or if a lawful means may lead to a lawful or an unlawful end with equal probability, there is then a difference of opinion. However, al-Qarāfī and other Mālikī jurists offer a slightly different categorisation. Firstly, a means that is of significance and is prohibited by consensus, e.g., digging a deep pit in a public pathway. Secondly, a means that is of no significance and is permitted by consensus, e.g., maintaining a vineyard that may end up as wine. Thirdly, a means that is of disputed status. e.g., deferred sales – buyūʿ al-ājāl in which the vendor sells his product for £10 payable after one month and then purchases the same product back before the end of the month [i.e., immediately] for £5 at spot. This transaction is effectively a loan of £5 to the buyer on which he pays £5 interest at the end of the month. The Mālikī and Ḥanbalī schools give consideration to the end result and prohibit this transaction, whilst the Ḥanafi and Shafi‘ī schools allow this transaction as the contract form is sound. Abū Zahrā, however, offers a quadruplicate categorisation. The first category relates to means that result in harm with absolute certainty, such as digging a deep pit behind the door of a property in an unlit pathway so that anyone who enters will undoubtedly fall into the pit. If the commission of the act is without sanction, such as a pit in a public pathway, the perpetrator is culpable by consensus. If the commission of the act is fundamentally lawful, such as digging a sewer in private property that causes a neighbour’s wall to collapse, there are then two opposing views. This first considers the commission permissible as a lawful exercise of right in one’s property. The second considers the commission impermissible, as preventing harm takes priority over securing a benefit. The second category relates to
means that seldom result in harm, such as maintaining a vineyard that may end up as wine. Commission of such means is undoubtedly permitted.312 The third category relates to means for which the preponderant outcome is harm, but not with absolutely certainty, such as selling grapes to a wine merchant. According to Abū Zahrā, dominant presumption will be treated as absolute certainty, and this is the opinion of Imām Mālik and Imām Aḥmad only, and is not a consensus position, as appears to be the claim of al-Shāībī.313 The fourth category relates to means that frequently result in harm, but the frequency does not reach the level of dominant presumption or absolute certainty. Imām Mālik and Imām Aḥmad consider such means impermissible in view of the end, whilst Imām Abū Ḥanīfa and Imām Shāfiʿī consider the means permissible in view of the contract form being sound and the harm not being the dominant end.314 Many of the cases cited above are discussed in the Ḥanafī School under the notion of assistance in sin. According to Imām Abū Ḥanīfa, if the commodity is exclusively for what is unlawful, such as in the sale of wine, it is prohibitively abominable. If it is not exclusively for what is unlawful, such as the sale of pressed grapes to a wine merchant, and any unlawfulness is rather the result of the action of an agent of volition, it carries no abomination. Equally, if the deed itself is not unlawful, and any unlawfulness is rather the result of the action of an agent of volition, it carries no abomination. Imām Abū Yūsuf and Imām Muḥammad, however, take a contrary position in the latter two circumstances.315

The question remaining is, with reference to the UK, what role, if any, to what degree of certainty, does the legalisation of organ transplantation play in the exploitation of an already disadvantaged underclass, the creation of commercial organ trade and organ tourism? I would suggest that the fears expressed here are not the experience in the UK, and that the governance structures in the UK make such extremely unlikely. Thus, the doctrine of sadd al-dhārāʾiʿ is, arguably, not relevant for the UK. However, it is true that these are fears of
particularly developing countries, for which there is also supporting evidence. Thus, a discussion on the doctrine is warranted.

It is clear that, it is not the case that the legalisation of organ transplantation in developing countries will lead to exploitation of consideration, a commercial organ trade or organ tourism as a matter of absolute certainty or predominantly, and thus, a ruling of prohibition is not warranted. It is also not a matter of equal probability. It is either seldom, or more frequent than that, but less than dominant presumption. In such case, it remains a disputed matter. According to the principles of Imām Mālik and Imām Ahmad, the doctrine of sādd al-dharrāʾ iʾ renders it unlawful, whilst according to the principles of Imām Abū Ḥanīfa and Imām Shāfīʿī, it is lawful. This is if, indeed, a direct link can be proven between legalisation and exploitation. I would argue that it is not legalisation that gives rise to exploitation, but rather a failure of governance that allows it. Countries with relatively strong governance structures do not encounter the exploitation that is suffered by countries with weak governance.

Thirdly, the reason why such exploitation exists is the lack of an adequate supply of organs. An increase in the supply of organs would reduce the demand for organs. Thus, legalisation of transplantation would, arguably, improve the situation rather than create a problem.

Posthumous pain perception

A popular notion in the Muslim community, and one that I have personally grown up with, is that the deceased perceives pain after death, and that this pain is a heightened pain. Thus, the living should take extreme care when handling the deceased. This notion comes up frequently in discussions related to organ transplantation. However, whilst the deceased should be handled with utmost dignity, there is no clear and reliable textual evidence that the deceased perceives pain of any kind due to being handled or treated inappropriately. In fact, Ḥanafī legal manuals emphatically state that the deceased does not perceive pain, and that any such notion is inconceivable. As for the punishment in the grave, the settled position is that the body, whether whole, dismembered or even broken down into simple organic matter, is given sufficient life to allow it to perceive pain, even if the exact nature of that life is a matter of dispute. Ibn Yūnus (d. 451/1061) of the Mālikī School also makes the point that...
the deceased does not perceive pain, and is cited by later Mālkī jurists such as al-Mawwāq (d. 897/1491) and Ḥanbālī legal manuals also unmistakably state that the deceased does not perceive pain. It is thus clear that the notion of posthumous pain perception due to third party assault or intervention is not congruent with any of the four schools, and so it can be concluded that the deceased does not perceive any pain during the process of organ retrieval.

Living/Altruistic Organ Transplantation

In the absence of any clear evidence to prohibit the transplantation of human organs and in the pursuit of public interest, it would appear that living/altruistic organ transplantation is permissible provided:

1. The situation is one of medical necessity, viz. to save life or restore a fundamental bodily function and transplantation is the only viable option.
2. The harm to the donor is negligible or relatively minor that it does not disrupt the life of the donor.
3. There is a reasonable chance of success.
4. The organ or tissue is donated with express and willing consent.
5. The procedure is conducted with the same dignity as any other surgery.
Death in Islam

In Islam, like the Hellenic, ancient Egyptian, Chinese, Judeo-Christian, Hindu and most other cultures and religions, death is defined as the departure of the soul from the body. Whilst one particular sound Hadith describes this for the believing person as “flowing like the water flows from the mouth of the water pot,” the reality of the soul though is not definitively expounded in the evidentiary texts. When the Prophet (peace and blessings of Allah be upon him) was asked about the rūḥ, which, according to the major authority, is a reference to the soul as opposed to Gabriel or another angel etc., he relayed the following verse:

وَسَأَلُوكُنَّ عَنِ الرُّوحُ ﴿۸۵﴾ فَقَلَ الْرُّوحُ ﴿۸۶﴾ فِي مَنْ أَمْرُهُ وَمَا أُفْتِيَهُ مِنْ عُلُومٍ إِلَّا فِي ذَلِكَ ﴿۸۷﴾ [الإسراء]

“And they ask you about al-rūḥ - the soul. Say, ‘The soul is of the amr – affair of my Lord and you have not been given of the knowledge but little.’” [Qurʾān, 17:85]


324 Unless the soul of a person is not clearly defined in the evidentiary texts.

325 When the Prophet (peace and blessings of Allah be upon him) was asked about the rūḥ, which, according to the majority opinion, is a reference to the soul as opposed to Gabriel or an angel etc., he relayed the following verse:

ۚ “And they ask you about al-rūḥ - the soul. Say, ‘The soul is of the amr – affair of my Lord and you have not been given of the knowledge but little.’” [Qurʾān, 17:85]
Exegetes generally explain that, the sound position is that the reality of the soul has intentionally been left obscure as a demonstration of man’s inability *a fortiori* to comprehend the reality of God. A number of Muslim scholars have, however, offered a range of opinions on the reality of the soul, but the truth is that they are only conjecture heavily influenced by the philosophical and theological discussions of their times. This can be witnessed, for example, in the opinion of al-Ghazālī,

“So know that, that which strives towards Allah, Most High, that it may achieve His closeness, is the heart, not the body. And by the heart, I do not mean the perceived piece of flesh, but rather it is from the secrets of Allah, powerful and exalted is He, the sensory perception does not perceive it, a subtlety from amongst His subtleties. Sometimes it is referred to as al-rūḥ - the soul, sometimes as al-nafs al-muṭma’ina – the contented soul, and the shari’a refers to it as al-qalb – the heart, as it is that which is the primary vehicle for that secret and through which the entire body becomes a vehicle and instrument for that subtlety. The lifting of the veil from that secret is from ‘ilm al-mukāshfa – the Science of Unveiling, and that is something that is withheld. In fact, there is no dispensation in its mention. The extent of what may be said in its regard is that it is a precious jewel and a valuable pearl more noble than these visible bodies. It is nothing more than a divine amr as He, Most High, has said, “And they ask you about al-rūḥ - the soul. Say, ‘The soul is of the amr [affair] of my Lord’. All creations are ascribed to Allah, but its ascription is nobler than the ascription of all limbs of the body. For the creation and the command are both for Allah, and the command is loftier than the creation. And this precious jewel that bears the trust of Allah, Most High, and which is precedented on account of this station over the heavens, earths and the mountains when they refused to carry it and were apprehensive of it from the realm of the command. And it is not understood from this that this is an allusion to its infinite pre-existence, for one who holds the infinite pre-existence of the souls is deceived, ignorant and does not know what he is saying. So let us grasp the reins of discussion in relation to this discipline for it is beyond what is our present concern. The intent is that this subtlety is the one that strives to get near to the Lord as it is from the affair of the Lord. From Him is its emanance and to Him is its return. As for the body, it is its vehicle which it rides and the medium through which it strives. So the body for the soul in the path of
Allah, Most High, is like the she-camel for the body on the path of the Ḥajj, and like the fetcher and storer of the water which the body is in need of. So every knowledge, the intent of which is interest of the body, so it is from the sum of the interests of the vehicle.”

Then, in relation to what constitutes death, al-Ghazālī says,

“Know that people hold many false notions in which they have erred in relation to the reality of death. So, some presume that death is non-being and that there is no assembly, no resurrection and no consequence to good and evil. And that the death of the human is like the death of animals and the desiccation of vegetation. This is the opinion of heretics and everyone who does not believe in Allah and the Last Day. One group presumes that he becomes non-existent upon death and does not perceive pain from punishment or enjoy reward as long as he is in the grave until he is returned at the time of the Assembly. Others have said, ‘The soul continues to exist and does not become non-existent upon death and it is the souls that are rewarded or punished rather than the bodies. And the bodies will not be raised nor assembled at all.’ All of these notions are corrupt and inclined away from the truth. Rather, which the paths of reflection bear witness to, and which the verses and reports speak of, is that the meaning of death is only change of state, and that the soul continues to exist after departing the body; either punished or rewarded. And the meaning of its departure from the body is the cessation of its administration by the body leaving its control, for the limbs are instruments of the soul which it employs, to the extent it [soul] holds with the hand, hears with the ear, sees with the eye, and knows the reality of things with the heart. And the heart here denotes the soul and the soul knows the things independently without an instrument. It is for that reason that it feels pain directly from the varieties of grief, distress and sadness and it enjoys varieties of happiness and pleasure. And all of this is not related to the limbs. So, all that which is a direct attribute of the soul, it remains with the soul after departure from the body. And that which belongs to it through the medium of the limbs, so it becomes obsolete with the death of the soul until the soul is returned to the body. It is not farfetched that the soul is returned to the body in the grave. It is not farfetched that it is delayed until the day of resurrection. And Allah knows best what He has decided for every one of His servants. The obsoleteness of the body upon death resembles the obsoleteness of the limbs of the paralysed individual due to the corruption of nature that occurs in him and the hardness that sets in the sinew not allowing the penetration of the soul in it. So the knowing, intelligent, perceiving soul continues to exist and utilise some limbs whilst others have escaped its control. And death connotes the rebellion of all limbs. All the limbs
are instruments and it is the soul that is the utilizer of them. And by the soul, I mean the human that perceives the sciences, the pains of griefs and the pleasures of happinesses. And whenever its administration in the limbs becomes obsolete, it does not lose the sciences and perceptions, nor do the happinesses and griefs become obsolete, and nor does its ability to perceive pains and pleasures become obsolete. The human, in reality, is the material being that perceives the sciences and the pains and pleasures. And this does not die, viz., does not become a non-being. The meaning of death is the cessation of its administration in the body and the body ceasing to be an instrument for it, just as the meaning of paralysis is the cessation of the hand being a used instrument. Thus, death is absolute paralysis in all the limbs, and the reality of the human is his nafs and rūḥ, and that continues to exist.  

Al-Ghazālī presents cognitive functions as direct attributes of the soul without the medium of any part of the physical body. However, there is no clear scriptural basis for this and this is rather pure conjecture which we know today to be untrue. Cognition, perception, volition, and thought are all functions of the cerebral cortex. Notwithstanding, what is clear is that, in Islam, death, viz., the departure of the soul from the body, is a metaphysical phenomenon. The reality of the soul, its entry into and departure from the body are beyond our ability to perceive and observe directly. This necessitates that entry and departure have to be determined through physical signs. Glazing of the eyes is the single event expressly mentioned in the Ḥadīth. Additionally, Muslim jurists have used somatic signs, mainly based upon observation, to indicate the imminence and incidence of death. In the Ḥanafī School, limpness of feet, inclination of nose, sinking of temples, and hanging of the scrotal skin due to the recession of the testicles are identified as signs of the imminence of death experienced by a muḥtaḍar – one who has been visited by death/angel of death. 

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School identifies respiratory arrest, glazing of the eyes, parting of the lips and limppness of the feet as signs of actual death wherein the soul has departed the body. The glazing of the eyes has also been described as an antecedent to death. The Hānafī School identifies limppness of feet, inclination of nose, cessation of palms, hanging of the scrotal skin due to recession of the testicles, sinking of temples, separation of both forearms, and elasticity of facial skin to be signs of death. The Ḥanbalī School identifies limppness of feet, inclination of nose, flexibility of facial skin and sinking of temples as signs of death, with the sinking of temples and inclination of nose as relatively more certain signs.

It is clear from this discussion that the physical signs of death indicating the metaphysical departure of the soul from the body were, on the whole, identified through observation, experience and rational enquiry. These signs are not definitive. In fact, the Hānafīs identified some of the signs as antecedent to death after which death would soon occur, whilst other jurists identified the very same signs as evidence of actual death. If the death occurs suddenly, or doubt remains as to whether death has indeed occurred, with coma and apoplexy suggested as examples, the Ḥanafī School requires a delay until death is positively ascertained, even if that is with putrefaction. The position of the Mālikī School is very...
much the same with mention also of a delay of two or three days. If the death occurs due to trauma, such as lightning strike, intense grief or fear, torture, burns, drowning, or an illness that behaves like death, the Shafi’i School also requires certainty of diagnosis, such as putrefaction, even if it takes a delay of three days. The Hanbalî School also requires a delay until death is ascertained with certainty.

It is evident from the above discussion that dominant presumption normally suffices to determine death, but where there is a reason to doubt the occurrence of death, the declaration of death will be delayed until the doubt is removed. Jurists employ a number of terms to indicate degree of certainty, ranging progressively from fancy - wahm - to doubt - shakk, presumption - ẓann, dominant presumption - ẓann ghâlib, and certainty - yaqîn. Doubt connotes outcomes that are equally probable without inclining towards any one outcome. Presumption connotes the preponderant outcome when the remaining outcome/s is/are not disregarded. The remaining outcome/s is/are termed fancy. Dominant presumption connotes the preponderant outcome when the remaining outcome/s is/are disregarded. Dominant presumption is akin to certainty, which connotes apodictic judgement that does not entertain doubt. Thus, a diagnosis of death normatively requires a dominant presumption of death.
wherein the probability of life has been disregarded. If there are confounders to diagnosing death, an apodictic diagnosis of death that does not entertain doubt is required.

It is interesting to note that cardiac arrest is not mentioned by the classical jurists as a sign of death. However, contemporary Muslim scholars have recognised irreversible cardio respiratory arrest as a reliable sign of departure of the soul, as also resolved by the IIFA. This is the opinion of a number of scholars, such as Dr ‘Umar Sulaymān al-Ashtar, Dr Muhammad Na‘īm Yāsīn, Dr Ahmad Sharīf al-Din and others. However, the Makka based IFA did not consider whole brain death to be sufficient to effect a ruling of death but also required cardio respiratory arrest.

It is also argued, by Sheikh Bakr ibn ’Abdullāh Abū Zaid, Sheikh Muḥammad Sa‘īd Ramaḍān, Sheikh Badr al-Mutawallī ‘Abdul al-Bāsiṭ, Sheikh Muḥammad al-Mukhtar al-‘Asqar, Dr Tawfīq al-Wā‘ī, Sheikh ‘Abd al-Qādir al-‘Imārī, Sheikh ‘Abdullāh al-Bassām, and others. However, the Makkah based IIFA did not consider whole brain death to be sufficient to effect a ruling of death but also required cardio respiratory arrest.

The same resolution also recognised the irreversible cessation of all brain function as a reliable sign of departure of the soul, as also resolved by the IIFA.342 This is the opinion of a number of scholars, such as Dr ʿUmar Sulaymān al-Ashtar, Dr Muḥammad Naʿīm Yāsīn, Dr Ahmad Sharīf al-Din and others. However, the Makka based IFA did not consider whole brain death to be sufficient to effect a ruling of death but also required cardio respiratory arrest.

Most contributors to the IFA (India) deliberations in 2007 on brain death rejected the notion that brain death alone was actual...
death, and the academy resolved, “When the respiratory system collapses completely and the signs of death are apparent, only then it would be declared that the patient is dead. His will will take effect from that time. The inheritance will be released and the period of ʿIddat will also be counted from that time.” I too am of the opinion that cardio respiratory function supported by mechanical ventilation cannot be discounted when determining death. These are not functions that can be disregarded, and so dominant presumption is not achieved. On the contrary, it is a confounder which, arguably, then requires an apodictic diagnosis of death that does not entertain doubt. Some scholars have offered the story of the cave sleepers who slept for 300/309 years to then be awoken as evidence that loss of consciousness alone is not sufficient to indicate the departure of the soul. However, the admissibility of this event as evidence would, in my opinion, require loss of capacity for consciousness as opposed to loss of only consciousness. Notwithstanding, the legal maxims, al-yaqīn la yazūl bi al-shakṭ – certainty is not removed by doubt and al-qatl ba Jadhbah Raḥm awr Dimāghī Mawt – the normative position for is that for what was to remain upon what it was and the principle of istishāb al-ḥal – presumption of continuity [in the Mālikī, Shāfiʿī and Ḥanbalī schools] require that the individual is considered to be alive until there is evidence to the contrary. This is also congruent with one of the primary objectives of Islamic law of protection of life and is supported by the statement of Muslim jurists that, where there is a reason to doubt the occurrence of death, the declaration of death will be delayed until the doubt is removed.

The deliberations of contemporary Muslim scholars do not appear to take account of the discussions, and indeed controversies, in western bioethical discourse surrounding the definition of death. Whilst a binary division of whole brain and brain stem criteria is acknowledged and sometimes discussed almost synonymously, there does not appear to be

356 Qatl ba Jadhbah Rahm awr Dimāghī Mawt, Dār al-Islāḥ, p. 349.
357 Juristic Decisions on Some Contemporary Issues, Islamic Fiqh Academy (India), New Delhi, p. 268.
358 "Do you think that the People of the Cave and al-raṣūl [dog/inscribed tablet/mountain] were a wonder from among Our signs? When the youths took refuge in the cave, and said, ‘Our Lord! Grant us mercy from Yourself and guide us rightly through our ordeal.’ So We sealed up their hearing in the Cave for a number of years. Then We raised them so We may know which of the two groups would make a better estimation of the length of their stay.” [Qurʾān, 2:178]
359 Qatl ba Jadhbah Raḥm awr Dimāghī Mawt, Dār al-Ishāʿat, Karachi, p. 349.
360 al-aṣṣ al-ḥal – the normative position is for what was to remain upon what it was and the principle of istishāb al-ḥal – presumption of continuity [in the Mālikī, Shāfiʿī and Ḥanbalī schools] require that the individual is considered to be alive until there is evidence to the contrary. This is also congruent with one of the primary objectives of Islamic law of protection of life and is supported by the statement of Muslim jurists that, where there is a reason to doubt the occurrence of death, the declaration of death will be delayed until the doubt is removed.
361 Qurʾān, 2:178.
any appreciation of the philosophical definitions that these criteria attempt to determine. In western bioethical discourse, it is acknowledged that, the criteria for determining death must be related to some overall concept of what death means, and what is essential to the nature of the human species and, therefore the loss of which is to be called “death” is a philosophical or moral question, not a medical or scientific one. There are several candidates for this philosophical definition of death:

- Irreversible loss of vital fluid, blood and air-flow – this is a view of the nature of the human being that identifies the human essence with the flowing of fluids in the animal species. When the circulatory and respiratory functions cease, the individual is dead as the loss of vital fluid, blood and air-flow will most certainly be followed by a chain of events at the end of which all features of life will disappear. The corresponding criterion for this is the irreversible cessation of cardio respiratory functions which is determined by apnoea and the absence of pulse, etc.

- Irreversible loss of function of the organism as a whole – this is the view that the living being is a superior entity and, as such, it is essentially different from the mere sum of the individual parts of the body and their functions. Once a body has lost its integrating capacity (through loss of whole-brain function) it becomes a mere collection of organs that can still be viable through extensive external support, but once this support is withdrawn, all features of life will soon disappear. This definition emphasises the loss of vegetative functions (respiration, circulation, hormonal secretion, etc.) and disregards consciousness and cognitive functions, as consciousness and cognition are properties possessed by persons and, as such, are irrelevant to the concept of death. The corresponding criterion for this is the irreversible loss of whole-brain function for which the Harvard or other [e.g., Minnesota] criteria may be used. However, the very physiological basis of this criterion was questioned by Shewmon who provided examples demonstrating that most integrative functions of the body are not mediated through the brain. In fact, the criterion is described as an unacknowledged legal fiction as “it does not fit with the biological definition of death established in medical practice and endorsed by public bioethics commissions, nor does it fit with the common concept of death. It is a state in which profound neurological damage causes the permanent loss of consciousness and the inability to meaningfully interact with the world or operate many bodily functions, which arguably makes people’s lives lacking in any humanly significant value. Nevertheless, it strains credibility to think that a corpse can remain

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369 Ibid.
370 Harvard criteria (1968): Unreceptive and unresponsive; no movements (observe for one hour); apnoea (3 minutes off respirator); absence of elicitable reflexes; and isoelectric electroencephalogram “of great confirmatory value” (at 5 μV/mm). All of the above test should be repeated at least 24 hours later, and there should be no change. Pallis C. & Harley D.H. (1996): ABC of Brainstem Death, 2nd Ed., BMJ Publishing Group, London, p.9.
371 Minnesota criteria (1971): Known and irreparable intracranial lesion; no spontaneous movement; apnoea (4 minutes); absent brainstem reflexes; and all findings unchanged for at least 12 hours. Electroencephalography not mandatory. Ibid.
warm to the touch, heal wounds, gestate babies, or go through puberty.” There is also a dissonance between the definition and its criteria as the former emphasises vegetative functions only, while the latter includes all brain functions. It is also observed that only a small number of functions, mostly limited to the brainstem, are tested, whereas a more thorough testing of patients who meet the standard do, in fact, retain many brain functions, including the secretion of hormones, temperature regulation etc. The 2008 report from the President’s Council on Bioethics on ‘Controversies in the Determination of Death’ concluded that “If being alive as a biological organism requires being a whole that is more than the mere sum of its parts, then it would be difficult to deny that the body of a patient with total brain failure can still be alive, at least in some cases.”

- Cognitive death (loss of personhood) – irreversible loss of that which is essentially significant to the nature of man. Vegetative or homeostatic functions will be replaceable by artificial technology, but a mechanical substitute for consciousness is conceptually absurd. Death should be the loss of the functions that are irrereplaceable, i.e., personhood. The corresponding criterion for this is the irreversible loss of higher brain function, which is determined by the absence of responsiveness and voluntary movements, etc. However, a person in a persistent vegetative state or a child with hydranencephaly (has no cerebral hemispheres and the cranial cavity is full of cerebrospinal fluid) is considered dead under this definition, despite spontaneous respiration, swallowing and grimacing in response to painful stimuli.

- Irreversible loss of the capacity for consciousness combined with the irreversible loss of the capacity to breathe – both are essentially brain stem functions and the concept is argued to express philosophical, cultural and physiological concerns. This definition emerged primarily from the work of the philosopher David Lamb and neurologist Christopher Pallis and is the definition used in the UK, which has never endorsed the concept of whole-brain death. The reticular activating system (RAS) in the upper brain stem regulates arousal and consciousness whilst respiration is controlled by several discrete centres within the brainstem. Whilst the latter are tested directly through the apnoea test, the RAS cannot [currently] be tested directly and it is rather assumed that the destruction of a variety of nearby test centres means that the RAS too is destroyed. According to Pallis, the loss of the capacity for consciousness can be thought of as a reformulation (in terms of modern neurophysiology) of the older cultural concept of the departure of the “conscious soul” from the body. In the same perspective, irreversible apnoea can also be thought of as the permanent loss of the “breath of life.” It is clear that the loss of either

378 Ibid, p. 5.
379 The current position in law is that there is no statutory definition of death in the United Kingdom. Subsequent to the proposal of the ‘brain death criteria’ by the Conference of Medical Royal Colleges in 1976, the courts in England and Northern Ireland have adopted these criteria as part of the law for the diagnosis of death. A code of practice for the diagnosis and confirmation of death. Academy of Medical Royal Colleges 2008, p. 11.
381 Ibid.
consciousness or spontaneous respiration alone does not equate to death. PVS patients with spontaneous breathing and patients who are conscious but do not have spontaneous breathing (like the late Christopher Reeves) are not dead. Truog & Miller ask, what is it about the combination of the two that makes a difference? Truog and Miller’s argument is that brain death is not death but it is still morally acceptable to retrieve vital organs under the principles of consent and non-maleficence. Potts and Evans accept that brain death, whether whole or brainstem, is not death and that “there were never sound empirical grounds for criteria of death based on the loss of testable brain functions while the body remains alive.” However, they dispute the claim that the removal of organs is morally equivalent to “letting nature take its course”, arguing that it is the removal of vital organs that kills the patient, not his or her disease or injury.

- Departure of the soul from the body – as in the Hellenic, ancient Egyptian, Chinese, Judeo Christian, Islamic, Hindu and most other religions and cultures. The separation of body and soul is recognised as being difficult to verify scientifically and is rather “best left to religious traditions, which in some cases still focus on the soul-departure concept.” Others opine, “It would, however, be impossible to derive criteria of death from this concept because of the impossibility of ascertaining the locus of the “soul.” In his address to an International Congress of Anaesthesiologists, Pope Pius XII stated, “Where the verification of the fact in particular cases is concerned, the answer cannot be deduced from any religious and moral principle and, under this aspect, does not fall within the competence of the Church. Until an answer can be given, the question must remain open. But considerations of a general nature allow us to believe that human life continues for as long as its vital functions -- distinguished from the simple life of organs -- manifest themselves spontaneously or even with the help of artificial processes.”

Organ Donation After Circulatory Determination of Death (DCDD)

This refers to the situation in which organs are removed after a patient is observed to have both stopped breathing and been without a pulse for a minimum of five minutes (in the UK). These are typically patients who are ventilator dependent due to disease, spinal cord injury or neurological trauma that does not meet brain-death criteria, etc. After the specified period without evidence of the return of circulatory or respiratory function, the patient is declared dead on the premise that irreversibility has been achieved, and the organs are expeditiously removed. Whilst 2 minutes (in fact 65 seconds) are sufficient to discount autoresuscitation, no one has ever maintained that it is impossible to successfully resuscitate patients after they have been pulseless for 5 minutes or more, since many such successful resuscitations have been documented both within hospitals and by paramedics in the field. Bernat et al argue that permanence is 100% predictive of irreversibility and so when patients

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384 Ibid.
388 Pope Pius XII, Address to an International Congress of Anaesthesiologists, November 24, 1957.
meet the criteria for permanence, they can be treated as if they meet the criteria for irreversibility. Miller & Truog reject this arguing that, “This stance unfortunately conflates a prognosis of imminent death with a diagnosis of death. Even if it is true that permanence infallibly predicts irreversibility, it does not follow that, when the cessation of circulation is permanent, the patient is already dead (as distinct from about to be dead).” Miller and Truog go on to state, “treating permanence as a valid indicator of irreversibility fails to reflect the critical difference in the logic of these two concepts. As Marquis observes, “A condition is permanent if the condition is never actually reversed. A condition is irreversible if the condition never could be reversed. In short, irreversibility entails permanence; permanence does not entail irreversibility.” Despite this rejection Miller and Truog hold that we should simply abandon the dead donor rule for the sake of transparency. Joffe et al call for a moratorium on the practice of donation after cardiocirculatory death until open public debate has been had, as they believe that it “is not ethically allowable because it abandons the dead donor rule, has unavoidable conflicts of interests, and implements premortem interventions which can hasten death.” Mcgee and Gardiner list a number of criticisms of DCDD but defend the view that irreversibility can reasonably be interpreted to mean permanence and that DCDD candidates can legitimately be categorized as dead. They consider that the line of argument by Bernat et al does not adequately explain the rationale to this claim, and rather opens itself to the criticism of confusing prognosis with a diagnosis or conceding that the patient is not dead but that there is no problem in that. Therefore, they offer an alternative line of argument in which their main argument is that “there is a problem in adopting a criterion for declaring death whose satisfaction is dependent on actions which are expressly ruled out as inappropriate.” The concept of irreversibility is ambiguous and can mean either or both (a) not capable of being resuscitated by CPR or other human action [regarding which Mcgee and Gardiner concede that nobody really knows when this point is given the variability of this point amongst patients]; or (b) not capable of autoresuscitation. In the cases where resuscitative measures are not appropriate, only interpretation (b) need apply [for which 5 minutes is more than adequate]. They go on to argue that notions of irreversibility, as defined by reference to human conduct such as CPR or other resuscitative efforts, are recent concepts reflecting recent developments in technology, and that it makes sense to decide to continue to classify those people who were dead before the advent of CPR as dead post CPR, just in those cases where CPR is inappropriate and so does not apply. Mcgee and Gardiner offer a two-tier criterion of death and state that they cannot see any problem, either logical or ethical, with this way of proceeding. “We would refuse to call dead those people upon whom we intend to use the technology unless and until, having used the technology, we failed to revive them, or unless and until we know that any effort to revive them would now fail. Only from that point would we declare these people ‘dead’. By contrast, in the case of those on whom it is not appropriate to use the technology at all, we would continue to declare them dead at the time and in accordance with the practice that was current before the advent of this new technology.” However, this understanding of irreversibility does not accord with the notion of the soul departing the body and rather allows the retrieval of organs before such

393 Ibid.
396 McGee M., Gardiner D. Permanence can be defended. Bioethics 2017; 31 (3), 220-230
397 Ibid.
398 Ibid.
departure giving credence to the charge that it implements premortem interventions which can hasten death. Whilst contemporary Muslim scholars have recognised cardio respiratory arrest as a reliable sign of departure of the soul, they have also required it to be irreversible. This stipulation of ‘irreversibility’ is to ensure that the soul has indeed departed and, whilst this stipulation is a recent introduction to the definition of death, it is arguable that it was always implied but had to be expressly stated only because we decided we would interfere with the body of the dying/deceased. Thus, DDCD is not permissible until the point of elective irreversibility has lapsed.

Organ Donation After Neurological Determination of Death (DDBD)

In the UK, this refers to the situation in which organs are removed after brain injury is suspected to have caused irreversible loss of the capacity for consciousness and irreversible loss of the capacity for respiration before terminal apnoea has resulted in hypoxic cardiac arrest and circulatory standstill. This is also known as heart beating donation (HBD). The patient will be maintained on the ventilator because spontaneous respiration has ceased. Before diagnosing brainstem death, the following conditions must be fulfilled:

1. Aetiology of irreversible brain damage. There should be no doubt that the patient’s condition is due to irreversible brain damage of known aetiology.
2. Exclusion of potentially reversible causes of coma.
3. There should be no evidence that this state is due to depressant drugs.
4. Primary hypothermia as the cause of unconsciousness must have been excluded.
5. Potentially reversible circulatory, metabolic and endocrine disturbances must have been excluded as the cause of the continuation of unconsciousness.
6. Exclusion of potentially reversible causes of apnoea, such as neuromuscular blocking agents and other drugs.  

Brainstem death is diagnosed by performing, on two separate occasions, five brainstem reflexes and an apnoea test:

1. Pupils should be fixed in diameter and unresponsive to light.
2. There should be no corneal (blink) reflex.
3. Eye movement should not occur when each ear is instilled, over one minute, with 50mls of ice cold water, head 30°. Each eardrum should be clearly visualised before the test.
4. There should be no motor response within the cranial nerve or somatic distribution in response to suborbital pressure. Reflex limb and trunk movements (spinal reflexes) may still be present.
5. There should be no gag reflex following stimulation to the posterior pharynx or cough reflex following suction catheter placed down the trachea to the carina.

If none of the above five tests confirm the presence of brainstem reflexes the apnoea test will be conducted as follows:

- Increase the patient’s F\textsubscript{1}O\textsubscript{2} to 1.0
- Check arterial blood gases to confirm that the measured P\textsubscript{a}CO\textsubscript{2} and S\textsubscript{a}O\textsubscript{2} correlate with the monitored values

\textsuperscript{399} A code of practice for the diagnosis and confirmation of death. Academy of Medical Royal Colleges 2008, p. 14-16.
\textsuperscript{400} Gardiner D., Manara A. Form for the Diagnosis of Death using Neurological Criteria (abbreviated guidance version), September 2015.
With oxygen saturation greater than 95%, reduce minute volume ventilation by lowering the respiratory rate to allow a slow rise in \( E_T CO_2 \).

Once \( E_T CO_2 \) rises above 6.0KPa, check arterial blood gases to confirm that \( P_a CO_2 \) is at least 6.0KPa and that the pH is less than 7.40.

The aim should be to ensure that this, and not a substantially greater, degree of hypercarbia and acidaemia is achieved for those with no previous history of respiratory disease or bicarbonate administration.

In patients with chronic \( CO_2 \) retention, or those who have received intravenous bicarbonate, the achievement of a mild but significant acidaemia as described would be achieved by allowing the \( P_a CO_2 \) to rise to above 6.5KPa to a point where the pH is less than 7.40.

The patient’s blood pressure should be maintained at a stable level throughout the apnoea test.

If cardiovascular stability is maintained, the patient should then be disconnected from the ventilator and attached to an oxygen flow of 5L/min via an endotracheal catheter and observed for five minutes.

If the maintenance of adequate oxygenation proves difficult, then CPAP (and possibly a prior recruitment manoeuvre) may be used.

If, after five minutes, there has been no spontaneous respiratory response, a presumption of no respiratory centre activity will be documented and a further confirmatory arterial blood gas sample obtained to ensure that the \( P_a CO_2 \) has increased from the starting level by more than 0.5KPa.

The ventilator should be reconnected and the minute volume adjusted to allow a gradual return of the blood gas concentrations to the levels set prior to the commencement of testing.

If the first set of tests shows no evidence of brain-stem function there need not be a lengthy delay prior to performing the second set. A short period of time will be necessary after reconnection to the ventilator to allow return of the patient’s arterial blood gases and baseline parameters to the pre-test state, rechecking of the blood sugar concentration and for the reassurance of all those directly concerned. Although death is not confirmed until the second test has been completed the legal time of death is when the first test indicates death due to the absence of brain-stem reflexes.

If the first set of tests shows no evidence of brain-stem function there need not be a lengthy delay prior to performing the second set. A short period of time will be necessary after reconnection to the ventilator to allow return of the patient’s arterial blood gases and baseline parameters to the pre-test state, rechecking of the blood sugar concentration and for the reassurance of all those directly concerned. Although death is not confirmed until the second test has been completed the legal time of death is when the first test indicates death due to the absence of brain-stem reflexes.

However, a diagnosis of death on the basis of the irreversible loss of the capacity for consciousness combined with the irreversible loss of the capacity for respiration, does not, on two accounts, satisfy the definition of death according to the IIFA, which requires (1) complete, irreversible cessation of all brain [and not just brainstem] function, and (2) the onset of decomposition. The IIFA verdict on organ donation also required the complete cessation of all brain functions [and not just of the brain stem]. Similarly, it does not satisfy the definition of death according to the Makkah based IFA, the Fatwā Committee of the Kuwait Ministry of Endowments, most contributors to the IFA (India) deliberations in 2007 on brain death, Sheikh Bakr ibn ’Abdullāh Abū Zaid, Sheikh Muḥāmmad Saʿīd.


Ramaḍān al-Būṭī,409 Sheikh Badr al-Mutawalli ʿAbd al-Bāsiṭ,410 Sheikh Muḥammad al-Muḥtaṭar al-Salāmī,411 Dr Tawfīq al-Wāʿī,412 Sheikh ʿAbd al-Qādir al-Imārī,413 Sheikh ʿAbdullāh al-Bassām414 and Dr Muḥammad al-Shinqīṭī,415 all of whom did not consider even whole brain death alone to be sufficient to effect a ruling of death but also required cardio respiratory arrest. I too am of the opinion that brainstem death or even whole brain death alone are not sufficient to indicate departure of the soul and that cardio respiratory function supported by mechanical ventilation cannot be discounted when determining death. Thus, DDBD following irreversible loss of the capacity for consciousness combined with the irreversible loss of the capacity for respiration 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.

Deceased Organ Donation and Transplantation

In the event that all requirements have been satisfied to indicate the departure of the soul from the body, and in the absence of any clear evidence to prohibit the transplantation of human organs and in the pursuit of public interest, it would appear that Deceased organ donation and transplantation of all organs/tissues besides the gonads is permissible provided:

1. The situation is one of medical necessity.
2. There is a reasonable chance of success.
3. The organ or tissue is donated with the willing consent, whether express or implied, of the deceased.
4. The procedure is conducted with the same dignity as any other surgery.

Transplantation of the gonads is not permissible as they continue to carry the genetic characteristics of the donor even after transplant into the recipient. This raises concerns from a sharīʿa perspective in relation to a reproductive process outside of the marital union and the effect this will have on ensuring that the lineage of the resultant offspring is secure. In this regard, I endorse the first clause of Resolution No. 57/8/6 passed by the IFFA concerning the transplant of sexual glands. However, contrary to the second clause of the same resolution concerning the transplant of genital organs, I see no reason for the prohibition of transplanting the external genitalia, as further to the transplant, they take the rule of the body of the recipient and do not carry the genetic characteristics of the donor.

Donation of stem cells

It is permitted to donate stem cells from:
1. Adult tissue – e.g., bone marrow
2. Tissue of a minor with parental permission

411 Ibid, 2:687.
412 Ibid, 2:718.
413 Ibid, 2:720.
414 Ibid, 2:786.
3. Cord blood
4. A miscarried foetus or a foetus aborted for a reason valid in sharīʿa
5. A surplus embryo incidental to the process of IVF.

The basis of permission in these five cases is that human dignity is not compromised and there is no other reason to prohibit the practice. However, stem cells obtained through therapeutic cloning are not permitted.

Respecting the wishes of the donor

The opinion of the European Council for Fatwa and Research concluded with three points, which I will now address. The first point related to respecting the wishes of the donor, his heirs or a third party authorised by the donor in deciding who the beneficiary should be and decreed that it was necessary to adhere to this wish as much as possible. Whilst directed donation is currently possible for live donors under current legislation across the UK, deceased organ donation must, in principle, be unconditional. However, after it is established that the consent or authorisation for organ donation is unconditional, a request for the allocation of a donor organ to close family relative or friend can be considered, but priority must be given to a patient in desperately urgent clinical need. Patients registered on the NHSBT Super-Urgent or Urgent Heart lists, Super-Urgent or Urgent Lung lists, Super Urgent Liver list will always take priority, if the organ is clinically suitable for them. The UK system prefers equity, utility and benefit over personal autonomy, and does not allow directed donation to a specific social group defined by race, religion, ethnicity, gender or sexual orientation, etc. The existing rules being thus, I do not feel that any further discussion is warranted at this juncture for the purpose of this paper.

Is a written instruction a legal bequest?

The second point made by the ECFR was that a written instruction to donate posthumously will be governed by the laws on bequests and the heirs or other third party could not alter the bequest. However, an instruction, whether verbal or written, to donate body parts posthumously does not meet the legal requirement of a valid bequest in any of the four Sunnī schools of jurisprudence. The Ḥanafī School stipulates that the object of bequest must admit to proprietary transfer through contract during the life of the testator, which is not the case for body parts. The Māliḳī School stipulates that the object of bequest must be desired and

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417 All patients with similar clinical characteristics on the National Transplant Waiting list shall have equal probability of receiving a graft from a deceased donor. Ibid, p. 3.
418 Allocation of an organ to the individual with the greatest number of life-years following the transplant. Ibid.
419 Allocation of an organ to the individual who is clinically assessed as having the greatest increase in life-years gained (comparing survival with and without transplantation). Ibid.
420 There is a valid discussion to be had as to whether Islam favours a personal autonomy model of distributary justice, an obligation model, or a combination of both. However, I feel that this discussion is beyond the scope of this paper.
transferable, such as through sale, and cannot be what one cannot legally own. Similarly, the Shafi’i School stipulates that the object of bequest must be desired, of licit benefit and admissible to elective transfer from one party to another. The Hanafi School stipulates the possibility of it being the object of bequest, which includes the requirement of ownership, licitness and admission to proprietary transfer. In truth, the stipulations of all four schools

422 مثلاً، هو كونه قابل للانتقال، وكونه متعلق بحالة أパーリت نفسها، فإن جميعه مسألة في الحال أو عدمه. [كتاب الوصاية، 742:9، م. ط. ريشود]

423 في الآداب، هو تكلفة التحدي: كونه متعلق بالحالة نفسها، فإن حوزة سبيلاء في الحال أو عدمه. [كتاب الوصاية، 743:9، م. ط. ريشود]

424 الهجرة من مذهب العلماء. كونه متعلق بالحالة نفسها، فإن حوزة سبيلاء في الحال أو عدمه. [كتاب الوصاية، 744:9، م. ط. ريشود]

Similarly, the Shafi’i School stipulates that the object of bequest must be desired, of licit benefit and admit to elective transfer from one party to another. The Hanafi School stipulates the possibility of it being the object of bequest, which includes the requirement of ownership, licitness and admission to proprietary transfer. In truth, the stipulations of all four schools

422 In general, the point of inheritance is a legal entity: when it is owned, it cannot be what one cannot legally own.

423 Similarly, the Shafi’i School stipulates that the object of bequest must be desired, of licit benefit and admissible to elective transfer from one party to another.

424 The Hanafi School stipulates the possibility of it being the object of bequest, which includes the requirement of ownership, licitness and admission to proprietary transfer. In truth, the stipulations of all four schools
amount to the same thing, viz. ownership, licitness and admission to proprietary transfer. Thus, in the absence of self-ownership and admission to proprietary transfer at least, it is clear that a verbal or written instruction to donate body parts posthumously is not a legal bequest. I have already established that, rather than self-ownership, the life and body of the individual combines both a right of the individual and a right of God and that the individual enjoys the right of disposal until such disposal conflicts with the right of God. If the right of God is preponderate, that right cannot be waived, compensated for nor inherited. The Ḥanafīs give the punishment for slander as an example. If the right of the individual is preponderate, such as in the right of requital, the individual may waive the right, accept compensation in the form of bloodwit and the right can also be inherited. However, it cannot be made the object of bequest, as there is no ownership and it does not admit to proprietary transfer. The Shāfiʿī School, in particular, expressly states that this does not apply to the likes of the punishments for slander and requital, even if they can be inherited or the guilty party can be absolved. Therefore, an instruction, whether verbal or written, to donate posthumously will not be governed by the laws on bequests and the heirs or other third party are not bound by this instruction. At best, it may be considered a bequest in the lexical sense only, as also suggested by the Dār al-İfta al-Miṣriyya, and is rather a ceding of the donor’s right to posthumous bodily integrity for the benefit of the recipient in a manner that is also aligned with public interest. Although the heirs are not bound by such instruction, they cannot also prevent such instruction being carried out. It also follows that, as the right of God is preponderate in human bodily integrity, such right cannot be inherited by the heirs. Thus, in the absence of any living instruction by the deceased, the heirs cannot consent to organ donation as surrogates of the deceased.

425 [Ibn Abī Shākir, al-Iṣlah, 2/439, 448.]

426 [There is a similar point to be made about the donation of body parts in the Shāfiʿī School.]

427 [Ibn Abī Shākir, al-Iṣlah, 2/448, 459.]

428 [To this effect, see the Dār al-İfta al-Miṣriyya, op. cit., II, 196, 192.]
**Implied consent**

The third point made by the ECFR was that, in any jurisdiction in which the law of deemed consent applies, the absence of an expression not to donate is implied consent. Without commenting on the merits and demerits of such a law, I concur with the opinion expressed by the ECFR that, any jurisdiction in which such law does [and is widely known to] exist, the absence of an expression to opt out is, under Islamic principles, implied consent to donate.

And Allah knows best.
Mufti Mohammed Zubair Butt
Jurisconsult
Institute of Islamic Jurisprudence, Bradford
15th Shawwāl 1440
18th June 2019
Appendix 1

THE COUNCIL RESOLVES:

First: An organ may be transplanted from one part of the body to another part of the same body, provided it is ascertained that the benefits accruing from this operation outweigh the harmful effects caused thereby; provided also that its purpose is to replace a lost organ, reshape it, restore its function, correct a defect or remove a malformation which is source of mental anguish or physical pain.

Second: An organ may be transplanted from the body of one person to the body of another person, if such organ is automatically regenerated, such as blood and skin. It is stipulated in this case that the donor must be legally competent, and that due account must be taken of the conditions set by Shari`a in this matter.

Third: It is allowed to transplant from a body part of an organ which has been removed because of a medical deficiency, such as the cornea, if, due to a disease, the eye had to be removed.

Fourth: 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.

Fifth: It is forbidden to transplant from a living person to another an organ such as the cornea of the two eyes, which absence deprives the donor of a basic function of his body. However, if it effects only part of the basic function, then it is a matter still under consideration, as explained in Para 8 below.

Sixth: It is allowed 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 of his body, provided it has been authorized by the deceased before his death 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.

Seventh: It must be noted that the permission, in the preceding cases, for performing organ transplant, is conditional that it is not done on commercial grounds (selling of an organ), because under no circumstances, should the organ of a person be sold. However, incurring expenses by a person in search for an organ or voluntary compensation as a token of appreciation, is a matter still under consideration and Ijtihad.

Eighth: All cases and forms other than those referred to above, which are relevant to the issue, are still under consideration and research. They must be submitted and considered at a following session, in the light of medical date and Shari`a rules.\textsuperscript{429}

Verily Allah is All-Knowing

\textsuperscript{429} Resolutions and Recommendations of the Council of the Islamic Fiqh Academy, Islamic Fiqh Academy, Jeddah, p. 53-54.
Appendix 2

In the name of Allah, the Beneficent, the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions.

RESOLUTION NO. (57/8/6)

CONCERNING
“TRANSPLANT OF GENITAL ORGANS”

The Council of the Islamic Fiqh Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 - 23 Sha’baan, 1410H (corresponding to 14 - 20 March, 1990),

Having studied the papers and recommendations on this subject which was one of the subjects discussed in the sixth medical and Fiqh seminar held in Kuwait, from Rabi’ul Awwal 23 to 26, 1410H (October 23 - 26, 1989), in cooperation between the Academy and the Islamic Organization for Medical Sciences of Kuwait,

RESOLVES

First: Transplant of sexual glands
Since the testicles and ovaries continue to bear and discharge hereditary attributes to the transferee, even after they are transplanted in a new grantee, their transplant is prohibited by Shari’a

Second: Transplant of genital organs
Transplant of some genital organs which do not transfer hereditary attributes, except the [external] genitals organs, is permissible for a legitimate necessity, in accordance with Shari’a standards and regulations indicated in Resolution No. 26/1/4 of the Fourth session of this Academy.

Verily, Allah is All-Knowing

Appendix 3

In the name of Allah, the Beneficent, the Merciful

Praise be to Allah, the Lord of the Universe, and prayers and blessings be upon Sayyidina Muhammad, the last of the Prophets, and upon his Family and his Companions.

430 Resolutions and Recommendations of the Council of the Islamic Fiqh Academy, Islamic Fiqh Academy, Jeddah, p. 114.
RESOLUTION No. 54/5/6

CONCERNING
“TRANSPLANT OF BRAIN TISSUES AND NERVOUS SYSTEM”

The Council of the Islamic Fiqh Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17 - 23 Sha’baan, 1410H (corresponding to 14 - 20 March, 1990),

Having studied the papers and recommendations on this subject which was one of the subjects discussed in the sixth medical and Fiqh Seminar held in Kuwait, from Rabī’ul Awwal 23 to 26, 1410H (October 23 - 26, 1989), held in cooperation between the Academy and the Islamic Organization for Medical Sciences of Kuwait,

And in the light of the conclusions deriving from the aforesaid seminar which include that transplant here is not intended to mean transfer of a human brain from one person to another, to treat the failure of certain tissues in the brain in properly discharging chemical and hormonal material and to replace these tissues with similar tissues obtained from another source, or to treat a gap of nervous system which has resulted from some injury.

RESOLVES

First: If the source of the tissues is the suprarenal gland of the same patient and are accepted by the patient’s body, because they are from the same body, the transplant is permissible in accordance with Shari’a.

Second: If the source of the tissues to be transplanted is an animal fetus, there is no objection to this method if its success is possible, and there is no contravention of any rule laid down by Shari’a. Physicians have mentioned that this method has been successful in different species of animals and it is hoped that it will prove successful if adopted with necessary medical precautions to avoid the body’s rejection of the transplanted organ.

Third: If the source of the tissues to be transplanted is live tissues from brain of a premature human fetus (in the tenth or eleventh week of pregnancy), the Shari’a ruling may differ in the following way:

A - The First Method:

Taking it directly from the human fetus in his mother’s womb by surgically opening the womb. The removal of the brain tissues of the fetus leads to its death. This is prohibited under Shari’a, except if it follows an unintentional natural abortion or a lawful abortion to save the mother’s life, and the death of the fetus becomes obvious. In such case, the conditions pertaining to the use of fetus as stated in Resolution No. 59/8/6 of this session must be observed.

B - The Second Method
This method may be adopted in the near future and it means the culture of brain tissues in special laboratory to benefit from them. There is no objection from Shari’a point of view to this method if the source of cultured tissues is lawful and they are obtained by lawful means.

**Fourth: Child born without a brain**

As long as the child is born alive, no part of his body may be taken away, unless it is proven that he is dead by the death of his brain stem. He is not different from other sound infants in this respect. If he dies, taking parts of his body must be in accordance with the terms and conditions applicable to the transplant of organs of the dead, such as obtaining the required permission, unavailability of a substitute, evident need and such other conditions indicated in Resolution No.26/1-4 of the Fourth session of this Academy. There is no objection under Shari’a to keep this brainless child on the artificial instruments up to the death of his brain stem in order to preserve the life of transferable organs and to facilitate benefiting from them by their transplant according to the aforementioned conditions.

Verily, Allah is All-Knowing⁴³¹

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