

Shi'i Jurisprudence and Organ Donation

Islamic jurisprudence, due to its reliance on the Qur'anic verses, Prophetic and Imams' narrations, reason and rationality, is able to offer solution for all the new issues facing Muslims in the modern time. This is because Islamic jurisprudence discovers the divine law which is comprehensive and it covers all aspects of humans' life (I have discussed this in more details in one of my articles entitled "The capacities of jurisprudence in encountering the new issues").

One of the most recent issues raised in jurisprudence, especially in last few decades, is organ donation. There are various scenarios in organ donation, and accordingly there are different arguments against organ donation.

One scenario is when the donor is alive and donates one part of his body to another individual out of his choice. This is in contrast to the case where the donor has either died or is about to die, and it is his guardians who have decided to donate on his behalf.

Another scenario is when both donor and recipient are followers of the same religion or they each ascribe to different religions i.e. either both are Muslims, both are non-Muslims or one is Muslim and the other one is non-Muslim.

The other possible scenario is when we prioritize secondary ruling with regards to organ donation. To explain that, one could argue that there are public interests in donating organ from Muslim to non-Muslim. The public interests include establishing good tie with other nations and communities. Whereas, by avoiding organ donation to non-Muslims, we might end up by damaging the relationship which could then lead to opposing other communities.

There are other possible scenarios which I am not going to discuss in detail, although what is going to be offered here as solution, could solve those scenarios too.

For those familiar with the jurisprudence and its framework, the first assumption in each action is permissibility *jawaz*, and it is the prohibition which requires evidence. However, this is in regard to the *mukallaf* himself, and not when someone else is deciding on his behalf. Based on this, in organ donation, when the donor is the owner of the organ (which is going to be donated) the first general principle of *jawaz* or permissibility would be applicable. On the other hand, if the donor is someone other than the owner, guardian for instance, then the general principle of impermissibility would apply, unless there is an especial evidence to allow the donation.

After mentioning this, I am going to briefly outline certain arguments raised by the advocates of impermissibility of organ donation:

1. When organ donation causes deformation or harm to the donor

Islam prohibits self-harming and harming others and obliges saving one's life and others' lives. It has been argued that donating organ causes harm to the donor's body. If this argument is proved to be true, it could prevent the act of organ donation.

The answer to this argument is that organ donation does not equate to harm. Indeed, if and when organ donation causes harm to the body, it would become impermissible.

2. Prohibition of dismembering a body

In circumstances of brain death, mutilation of organ, in order to donate the part to others, leads to cutting the corpse. This could become subject to the prohibition of dismembering in Islam. This could again prevent organ donation, due to its similarity to dismembering.

I have written on this in length in my book "The jurisprudence of contemporary issues, vol.1", but in brief, the act of organ donation is not counted as dismembering of body.

3. Prohibition of altering the nature of God's creation **التغيير في الخلقة الالهية**

According to some Qur'anic verses such as Chapter 4, verse 119, altering the nature of God's creation is regarded as an evil act. Removing a part of a body and transplant it to another body may be considered as altering the nature of God's creation, and thus could prevent organ donation.

I have shown in my other works, that the verse of the Qur'an mentioned above is referring to the change in God's plan for creation and does not mean physical change in body.

4. Humiliation of the donor of organ

Almighty Allah would never be pleased with his servants to be humiliated. Therefore, humiliation of ourselves or others is prohibited. And in this, there is no difference between living or deceased. Cutting the body in brain death could be viewed as humiliation of the deceased. If this argument is proved to be valid, organ donation will become prohibited.

However, I would argue that even if accept that there is an element of humiliation in organ donation in the case of brain death, this does not apply on other cases of organ donation.

5. Saving life of non-Muslims where the recipient of the organ is non-Muslim and the donor is Muslim is an action with which God would not be pleased.

The fundamental purpose of donating organ is saving the recipient's life. This is a crucial point which could be used to solve some of the problems mentioned above. Based on the view that does not believe in the sanctity of non-Muslim and therefore does not consider saving his life as obligatory, one may argue that organ donation from Muslim to non-Muslim is not legitimised.

However, based on various religious evidences, not only organ donation in this case is not prohibited, but is recommended.

Almighty God has praised the act of saving lives and has not limited this to saving Muslims' lives only. In Chapter 5, verse 32,

"and if any one saved a life, it would be as if he saved the life of the whole humankind"

Some other verses of the Qur'an encourage Muslims to treat non-Muslims with kindness. In chapter 60, verse 8, Almighty God states:

لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِّنْ دِيَارِكُمْ أَن تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

“Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those who are just”

Although the word *birr* would need a preposition *harf al-jarr* in order to connect to the pronoun of *hum*, it has been used in this verse without a proposition. This could be because the word *birr* in this verse includes the meaning of gracious treatment *ikram*. Based on this understanding of the term *birr*, showing kindness to infidels should be accompanied by respect.

Furthermore, in chapter 26, verses 106-161, Almighty Allah has referred to the prophets Noah, Saleh, Hud and Lut as the brothers of the polytheists, to which I refer as human brotherhood. Indeed, the brotherhood among Muslims is at high level with many legal and natural implications, nevertheless almighty God has mentioned the brotherhood between the prophets and infidels. Therefore, it seems the same implications of the brotherhood between Muslims would apply on the brotherhood among the prophets and infidels, unless excluded with a particular evidence.

Moreover, in the time and age where collaboration between nations and communities is advocated, as opposed to hostility and enmity, it becomes easier to justify organ donation from Muslims to non-Muslims.

What is pivotal to note, however, is that organ should be donated by the owner of the organ and not the guardian of the deceased or the patient who is not able to give consent. The guardian can only donate if he has the owner's permission, or if there is a way to discover the owner's consent. Otherwise, organ donation would be regarded as violating others' right over their body, and this is not justifiable.

To conclude, even if we agree with the notion that the primary ruling regarding organ donation from Muslim to non-Muslim is prohibition, the secondary ruling of permissibility should apply here, considering the urgent need for building peaceful and harmonious relationship between Muslim and non-Muslim communities. As we mentioned, the act of donating organ would need the prior consent of the owner and cannot be legitimised without it.

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