

## Organ Donation: 'Redressing the Reality'

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### Introduction

Organ transplantation is an issue which is conspicuous by its absence in Muslim scripture. The reason for this is quite simple – the first successful organ transplant took place in 1954 in America whereas the Qur'an was revealed in seventh-century Arabia. Therefore, classical Islamic law manuals - be they Sunni, Shia, Hanafi, Maliki or any other schools of law and theology – are understandably silent on the issue. A lack of direct guidance from the Qur'an and sunna and classical Islamic law books has led Muslim scholars, individually as well as collectively, to debate the issue. The first discussion on the topic took place in 1925 by Shaykh Abdur Rahman al-Sa'di, a Saudi scholar (1).

As a resident of Cardiff, a khatib in the local mosque and a lecturer of Islamic Studies at Cardiff University, I became interested in the topic after the law of deemed consent was introduced in Wales in December 2015. Since then I have been researching fatwas from the Muslim world on the issue in Arabic, Urdu and English. My investigation has led me to extrapolate six main Islamic positions on organ transplantation. These range from organ reception and donation being declared absolutely halal (2) to both being pronounced impermissible (3) - and various positions in between. The recent 110-page fatwa by Mufti Mohammed Zubair Butt is only one opinion from amongst the six (4). There is a seventh opinion where the mufti suspended judgment (tawaqquf) until further research is carried out. The fatwas differ from each other due to differences of understanding between muftis regarding Islamic conceptions of human dignity, bodily integrity, individual autonomy, death and dying and many other things. In my research, I argue that since the topic is not discussed in the Qur'an, sunna and classical Islamic law books, all of the fatwas are based on ijtihad (independent reasoning) and therefore no one position can lay claim to the truth over the other. In this instance, people are required

to understand the different Islamic positions with the assistance of their imams, local ulama and chaplains in order to make a religiously informed decision. This can only be possible if the information provided is accurate and factual. Misinformation can ultimately result in the difference between a life and death decision. In the remainder of this article, I take the opportunity to redress some common misconceptions about organ donation in Islam and the new law of 'deemed consent'.

### Understanding the New Law on 'Deemed Consent'

The 'Organ Donation (Deemed Consent) Act 2019' - popularly known as Max's and Keira's Law - expects to reverse the current position on organ donation in England from one where people have to sign up to donate their organs to the default position being 'deemed consent' in the absence of opting-out. This may give the impression that once the Act becomes law in spring 2020, one is no longer in control over their body if they do not opt-out.

This is certainly not the case in Wales and won't be in England. First of all, the law will only apply to people who have been resident in England for more than a year, who are over the age of 18 and who do not suffer from any form of disability. The 'deemed consent' law in Wales and England can be characterised as 'soft opt-out' as opposed to a 'hard opt-out'. In a 'soft opt-out' law, wishes of family members will always be respected and they do have a say in how and where the organs of their loved ones could be used (5). This then raises the question as to what is the purpose of this new law? The new law has two functions: (1) to catch all those people falling through the net who agree with organ donation but have not signed up on the organ donor register. Under current legislation, such people's organs cannot be retrieved without explicit consent. (2) It makes it easier for hospital staff to raise the topic of organ donation with the family of a dying patient.

Furthermore, not everyone who has consented in the current system or will not opt-out in the new system will go on to become donors. Out of the 500,000 people who die in the UK every year, only 1 in 100 die in circumstances where they are able to donate their organs. There are more chances of a person requiring an organ than being able to donate one. For a person's organs to be eligible for retrieval for donation, a person has to either die in hospital in an intensive care unit or an accident emergency department. Even then, it will depend on the status of the donor, for example the pancreas of a person with diabetes will not be retrieved even though he has consented or not opted-out. More so, if a recipient is not found on the day the donor dies, or a recipient is found but there is no tissue match between the donor and the recipient, no solid organs will be retrieved from the donor even if all his organs are healthy.

The technology to preserve an organ in an organ bank for later use in transplant surgery does not exist because organs only have a short shelf-life - known as cold ischemia time. The heart and lungs have a cold ischemia time of 4 to 6 hours; the pancreas, 12 to 24 hours; the liver, up to 24 hours; the kidneys, from 48 to 72 hours. The cornea tissues must be transplanted within 5 to 7 days and heart valves, skin, bones and saphenous veins have a shelf-life of 3 to 10 years. It should be noted that the NHS only retrieves organs for transplantation into needy patients. It does not fall within the NHS' remit to retrieve organs for research purposes. Donating organs or the entire body for research purposes requires express consent and falls outside the remit of the NHS as well as the fatwas on organ donation.

Another common confusion is that in an opt-out system if a person does not opt-out, doctors are able to retrieve any organs from the deemed consent list. This is factually incorrect. A person and his family can specify exactly which organs or tissues they want to donate or opt-out from. This is clearly an option given when one fills in the organ donation register either to express consent or opt-out. They can also specify whether organ retrieval should happen after circulatory determination of death or after neurological determination of death.

## Which Organs are Excluded from the New Law?

There are certain organs which are excluded from the new law. This means that if someone intends to donate these organs they must give express consent. The government has no intention of moving these to the 'deemed consent list'. They include: penis, uterus, brain, face, spinal cord, testicles, arm, leg etc. These are known as 'rare or novel transplants'.

There is a misunderstanding that there is a current government consultation open to move some or all

of these organs to the 'deemed consent list'. This is incorrect. The government consultation relates to whether some of the organs which form part of the 'deemed consent list' should be moved to the 'rare or novel transplant list' which require express consent. These organs include: eye, nervous tissue, artery/vein, bone, muscle, tendon and skin (6).

## Deemed Consent and Islam

From an Islamic point of view, whether deemed consent is permissible or not will depend on one's position as to whether organ donation is permissible or not. The fatwa of the European Council for Fatwa and Research (2000) (7) and the recent 110-page fatwa (2019) argue that if deemed consent was to exist in society and became widely accepted, it would take the ruling of implied consent.

## Post-Mortem examination

Muslims have been campaigning for a long time for non-invasive post-mortem examination techniques. They have succeeded in doing this by introducing MRI scans in some hospitals. Foremost in this effort were NHS Muslim chaplains, including the author of the 2019 110-page fatwa. Does organ donation advocate against this principle? No, for there are a number of problems associated with invasive post-mortem examination which are not found in organ donation.

1. There is no dispute amongst the ulama that in the presence of a suitable alternative, use of human organs for transplantation is not permissible. Should this become possible in the future, all the fatwas will change to impermissibility inshallah. However, with the exception of certain valves and tissues, an alternative solution to solid organs is currently not available. In the case of post-mortem examination non-invasive MRI scan has been made available.
2. The object of post-mortem examination is to find the cause of death; therefore, it is the duty of the pathologist to cut open and examine every organ should they need to. There is no requirement to keep the organs or any other body parts intact. In contrast, the sole motive in the case of organ retrieval is to procure the organs fully intact. This takes more subtlety and surgical precision. Post-mortem examination is done by a pathologist whereas organ retrieval is done by a specialist surgeon.
3. For legal reasons, post-mortem examination happens when the deceased dies outside of a hospital or if there is medical malpractice suspected. The examination can take a long time to carry out. This will definitely prolong the burial. In contrast, the delay in burial in the case of retrieving an organ is relatively shorter. It takes a maximum of 60 minutes 'knife to skin' to retrieve organ. This has been confirmed by Dr Muhammed Tariq Dosani, Consultant Urologist and Transplant surgeon, Freeman

hospital, Newcastle. The retrieval team already are in place and once the organs are retrieved and the body surgically stitched up, the body is released to the family. There may be a 16-20-hour delay in releasing the body which is minimal compared to post-mortem examination or sending the deceased abroad to be buried. Muslim transplant surgeon, Dr Majid Mukaddam says, there are efforts in place to minimise this time.

## Ghusl

People's experience of washing a body which has been subjected to post-mortem examination has been one of horror and shock. As sad as this may be, there is a stark difference between how post-mortem examination is done and how organ retrieval surgery is done., Dr Majid Mukadam responds to this by saying that one should not confuse organ retrieval with post-mortem examination. He confirms that after an organ retrieval surgery the body of the deceased is treated with utmost respect and returned to the family in a dignified manner.

## Dignity and exposure of the body

Whilst it is paramount to maintain dignity by not exposing body parts, the ulama have allowed for body parts to be exposed to the opposite gender due to necessity. Dr Mukadam says that whilst the ideal situation will be to match the gender of the surgeon with the gender of the patient, this is not always possible due to the lack of female transplant surgeons He mentions that there are more male gynaecologists than female ones.

Allah has dignified the human being, and part of this dignity lies in helping one another. Allah says, 'whoever saves a life it is as if they have saved the entire mankind' (Qur'an – 5:32). Given that the issue of organ donation is not directly addressed in Muslim scripture, some Muftis have extrapolated its permissibility from verses such as these.

I believe the issue of organ donation from an Islamic point of view is one of choice. Individual Muslims should consult reputable Islamic scholars to reach a position they are comfortable with. However, I leave readers with the words of brother Amjid Ali whose life was saved after receiving an organ donation from a family member:

“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?”

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