

Article

Seven Faces of A Fatwa: Organ Transplantation and Islam

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Abstract: A new *fatwa* was announced by the British National Health Service (NHS) in June 2019 to clarify the Islamic position on organ donation. Additionally, the NHS promotional material presents brief arguments for and against organ donation in Islam. However, to date, research into the various *fatwas* on organ donation is required. This article goes beyond the dichotomous positions mentioned by the NHS and goes on to explore and summarise seven conflicting views on the issue extrapolated from an exhaustive reading of *fatwas* and research papers in various languages since 1925. Our discussion is circumscribed to allotransplant and confined to the gifting of organs to legally competent adult donors at the time of consent. These arguments include an analysis of the semantic portrayal of ownership in the Qur'an; considering the net benefit over the gross harm involved in organ donation; balancing the rights of the human body with the application of the rule of necessity; understanding the difference between anthropophagy and organ transplantation; understanding of death, and the conceptualisation of the soul. We argue that, given the absence of clear-cut direction from Muslim scripture, all seven positions are Islamic positions and people are at liberty to adopt any one position without theological guilt or moral culpability.

Keywords: organ donation; organ transplant; *fatwa*; *mufti*; ownership; brain death; soul; Islamic law; NHS; *rūh*

1. Introduction

In June 2019, the British National Health Service (NHS) announced a new independent legal opinion (henceforth *fatwa*) clarifying the Islamic position on organ donation (NHSBT 2019). The *fatwa* was published in the wake of 'The Organ Donation (Deemed consent) Act 2019' receiving royal assent in March 2019 and scheduled to become law in April 2020 (Department of Health and Social Care 2019). The imminent change in law from express consent to an 'opt-out' system where consent is deemed to be the default position set off a flurry of action and campaigns in the Muslim community. Organisations such as the British Islamic Medical Association (BIMA) with funding from the NHS Blood and Transplant service managed to run numerous workshops and webinars promoting organ donation in the Muslim community (BIMA 2019). On the other hand, there was a pushback from some quarters of the Muslim community accusing the government of meddling in Muslim affairs (Master 2019).

To provide potential Muslim donors with a choice, the NHS promotional material presents brief arguments for and against organ donation in Islam. What is the correct Islamic position on organ transplantation? Why are some Muslims campaigning in support of organ donation while others oppose it? In this article, we go beyond the two positions mentioned by the NHS and explore seven conflicting views on the issue. We demonstrate that the Islamic discussion on organ transplantation

is highly technical and multi-faceted. The evidence provided for and against it is simultaneously opaque and porous, giving rise to a multitude of understandings. We posit that all seven positions are valid Islamic positions, expanding the range of choices hitherto offered by the NHS. We recommend that people consult with their families, imams, chaplains, doctors and significant others to arrive at a theologically informed decision about donating their organs, and the organs of their loved ones.

2. Methodology and Scope of the Article

The positions mentioned in this article were gleaned from an exhaustive reading of *fatwas* and research papers in Arabic, Urdu, and English. The initial search was conducted by inputting key words related to organ transplantation into the ‘Islamic Medical and Scientific Ethics Database’ (IMSE Project), a collaborative effort between two Georgetown Libraries, the Bioethics Research Library (Washington DC) and the Georgetown University Qatar Library (Doha) (Shabana et al. 2009). Certain Qur’anic concepts such as ‘*milkiyya*’, ‘*rūh*’ and ‘*nafs*’ were analysed using the ArabiCorpus tool, which was developed by Professor Dil Parkinson of Brigham Young University. The tool consists of over 174 million Arabic words—of which, 77% are from newspapers, 28 million words from non-fiction literature, 9 million words from premodern literature and 1 million words of modern literature (Parkinson 2013). In explicating the seven positions, we sufficed with analysing the major arguments for each position as a detailed analysis of all arguments will surpass the word count limit of this article. Moreover, our discussion is circumscribed to allotransplant, i.e., receiving from and donating to another human being. Autotransplant, xenotransplant, and donation for medical research are not the focus of this article as these transplantations come with another set of ethical issues not discussed here (see Padela and Duivenbode 2018 for some of these issues).

In conducting our research, we have upheld certain conventions without challenging them. Thus, our discussion on live organ donation is confined to the gifting of non-vital organs, as there is a consensus on the impermissibility of donating vital organs by a living person (IFC 2003; IIFA 1988).¹ Additionally, we automatically excluded the issue of donating male and female reproductive glands from both living and cadaver donors from our discussion; its impermissibility has not been challenged by anyone (Albar 1994). However, we do not exclude womb transplantation since some scholars have conditionally permitted it (for transplantation into women only) arguing that the womb has no influence in the genetic makeup of a child (Shawqī 2018b). With respect to donor types, we have focused on adult donors who were legally competent at the time of consent. The arguments in this article do not extend to the minor or the legally incompetent person as there are complicated ethical issues associated with them; a discussion, which is beyond the scope of this article. Finally, there are other peripheral issues associated with organ transplantation including directed organ donation, inter-faith organ donation, the status of organs of criminals, the issue of consent and deemed consent and the ethics of organ reception (see Rispler-Chaim and Duguet 2018). These will be discussed in subsequent articles.

3. Preliminary Remarks

Before delving into the different positions on organ transplantation, some remarks on the Islamic sources employed in this discussion are in order. Organ transplantation is an issue that is conspicuous by its absence in Muslim scripture. Scholars discussing the topic creatively entertain what God would have wanted had He pronounced on the subject. The starting point of all discussions is silence. Scripture is drawn upon to explain related abstract topics such as ownership of the body (Sachedina 2011, p. 176), human dignity and prohibition of mutilation (Ebrahim 1995, pp. 292–93; Sachedina 2011). These are abstract concepts which can be argued for either way depending on who is

¹ IFC: Islamic Fiqh Council (of Mecca), *Majma‘ al-Fiqhī al-Islamī*; IIFA: International Islamic Fiqh Academy (of Jeddah), *Majma‘ al-Fiqh al-Islamī al-Duwalī*.

interpreting them. Thus, the discussion on organ transplantation falls within the domain of ‘legal discretion’ (*ijtihād*) (Moosa 1998, p. 293), which is the reason why there is a plurality of opinions.

A *fatwa* is the product of *ijtihād*, which is a non-binding legal opinion provided by a specialist trained in Islamic law known as a *muftī*. Given the complex nature of technology and specialised knowledge, current practice in the Muslim world is to hold conferences, which bring together a group of specialists including *muftīs*, medical doctors, lawyers and other professionals depending on the nature of the conference. The collective deliberations at such conferences lead to the birth of a novel mode of reasoning and a new way of arriving at religious verdicts known as *ijtihād jamā’ī* (collective legal reasoning) (Caeiro 2017; ‘Abdullāh 2010; Ghaly 2012a; IFC 2004). The resolutions arrived at these conferences have more legal force than the *fatwa* of a lone *muftī* since government legislatures are present at those conferences. For example, the resolution passed by the International Islamic Fiqh Academy of Jeddah (IIFA) in 1988 led to the Saudi Government adopting it as their official position on organ transplantation. Ali AlBar writes in his exhaustive study on organ transplantation that as a result of this law, for the period up to 1991, Saudi Arabia saw 823 successful kidney transplants—352 of which were procured from patients whose deaths were determined using neurological criteria and 471 donations from living family members (Albar 1994).

The first Muslim discussion on organ transplantation at our disposal is by the Saudi scholar ‘Abd al-Rahmān al-Sa’dī (d. 1965) and dates back to 1925. Al-Sa’dī stages his discussion as a debate between opponents and proponents of organ transplantation without mentioning which side he is on. Nevertheless, it is not difficult to distil his position from the article. The Saudi bioethicist, Abdullah Aljouidi, in preparation for presenting his research as a poster to the Harvard bioethics conference 2018 quantified al-Sa’dī’s *fatwa*. Aljouidi observes that out of the 1,476 words of the article, al-Sa’dī utilises 22.6% of the words describing the prohibition position; the bulk of his article (56.9%) is used to simultaneously respond to the opponents of organ transplantation as well as arguing in its favour (Aljouidi 2018). Interestingly, al-Sa’dī’s discussion focuses on blood transfusion and corneal transplants. This focus is understandable given the state of transplant medicine during al-Sa’dī’s time.

The early part of the 20th century saw a shift in the world of organ transplantation. Al-Sa’dī’s context for his discussion originated before major breakthroughs were discovered. Thus, he provides a more generic guideline, which places trust in medical professionals and strongly encourages jurists and medical experts to collaborate on the matter. The discussion also highlights that as the medical field advances, what may once have been prohibited due to harm, may be permitted due to greater potential benefits (Maravia 2019).

Innovation in medical treatment is viewed positively by al-Sa’dī. Accordingly, the benefits of transplantation to patients are expected to outweigh the harms brought to the donor. Al-Sa’dī’s faith in the medical field may have been solidified by the two decades of successful corneal transplants since 1906 as well as the effective use of defibrillators in Europe. Likewise, consequent decades discovered tissue typing and immunosuppressant drugs in the 1970s to ensure more effective treatments. Al-Sa’dī, therefore, appears to have envisioned the trajectory of medical breakthroughs rather than fear the possible harms on living donors (Maravia 2019).

Earlier discussions and *fatwas* on organ transplantation focus primarily on individual organs and tissues rather than providing a *fatwa* for the entire body. The earliest discussions focused on blood transfusion (Al-Sa’dī [1925] 2011; Makhlūf 1951; Ma’mūn 1959a), followed by cornea tissue (Ma’mūn 1959b; Al-Harīdī 1966) and skin graft (Al-Khāṭir 1973). Only in the late 1960s did a general discussion on organ transplantation take place rather than individual organs (Shafī’ [1967] 2010; Gād al-Haq 1979). Recent *fatwas* on organ transplantation delve into novel and non-routine transplants such as womb transplant (Shawqī 2018b) and mitochondria DNA transplant (Shawqī 2018a). Despite the different foci of these *fatwas* and discussions, nearly all of them display the same concerns.

What can be gleaned from an exhaustive reading of these *fatwas* and discussions is that the following topics fare quite highly in them:

1. God’s ownership of the human body,
2. Human dignity,

3. Necessity,
4. Altruism and charity,
5. Benefit and harm, and
6. A watertight definition of death.

Our research has revealed that there are seven main opinions on organ transplantation in addition to some minor variations of these opinions. Below, we present these seven opinions; for each position, we provide the names of some advocates, its major arguments and response to those arguments. We use a considerable amount of space engaging with positions one and two as subsequent positions draw from the same pool of resources as these two.

4. Position 1: Organ Reception and Donation are both Forbidden

The first position can be deemed as the default position on how a human being should be treated as far as bodily integrity is concerned (see Rashid 2018). Proponents of this position argue that the human body should be left naturally intact as far as possible without any invasive intervention. This belief stems from the Islamic understanding of the ‘primordial natural state’ (*fiṭra*) enshrined in the verse of the Qur’an ‘This is the natural disposition God instilled in mankind— there is no altering God’s creation,’ (Q. 30:30).² For proponents of this position, organ transplantation in both iterations: reception and donation are prohibited. This opinion was held by Muḥammad Shafī‘ (d. 1976), former chief *mufṭī* of Darul Uloom Deoband India (Shafī‘ [1967] 2010), Akhtar Rezā Khān (d. 2018) (Khān 1991), Muḥammad Mitwallī Al-Sha‘rāwī (d. 1998) (Al-Sha‘rāwī 1987), ‘Abdullāh Ṣiddīq al-Ghumārī (d. 1993) (2007) and ‘Abd al-Salām ‘Abd al-Raḥīm Al-Sukkarī (1988) to name a few. These scholars resort to four types of sources to argue their position: (1) scripture, (2) classical Islamic law, (3) society and (4) culture.

Two main arguments are made by invoking scripture: (1) God’s ownership of the human body and (2) human dignity. The Qur’an clearly places the sovereignty of everything within God’s domain, ‘Exalted is He who holds all control in His hands; who has power over all things.’ (Q. 67:1). The Qur’an further singles out human beings as the property of God, ‘Say, ‘I seek refuge with the Lord of people, the Master of people, the God of people.’ (Q. 114:1-3). From such verses, it has been inferred that God is the true owner and master of the human body while humans act as mere stewards and agents for it. Stewardship implies that humans do not have unlimited freedom over their bodies (Sachedina 2011, p. 176). This freedom has to be bridled with accountability and responsibility which includes a fair-use policy.

4.1. The Ownership Argument

By using the above verses as a springboard, scholars from this camp develop rational arguments to prove that organ transplantation is impermissible. The argument is that true ownership of a thing means that one has complete control and discretionary right over that thing. Once the definition is established, the next question is whether it applies to human beings vis-à-vis their organs and limbs. To test this definition, scholars employ the case of voluntary and involuntary movements in the human body. Bakrū posits that there are certain movements and functions in the human body which are out of a person’s control such as breathing, flowing of blood and vital fluids, and bowel movements (Bakrū 1992, p. 201). Furthermore, even voluntary movements are predicated on God willing them to move, without which a person is not able to move an inch. By employing biological and theological reasonings, Bakrū concludes that since human beings fall short of the definition of ownership vis-à-vis their bodies, they do not have the right to transact with it.

Numerous responses have been given to the ownership argument. Firstly, a corpus-based analysis of the Arabic verb ‘*yamlīk*’ (to own) and its derivatives from the Qur’an reveal that, contrary

² All Qur’an translations in this article has been taken from Haleem, M. A. Abdel. (Haleem 2005). *The Qur’an*. Oxford: Oxford University Press.

to Bakrū, one does not need to have full control over a thing to own it. A frequency search of the verb ‘*yamlīk*’ and its derivatives using the ArabiCorpus tool reveals that the verb ‘*yamlīk*’ and its associate words denote owning the concrete such as wealth, as well as having the abstract such as right or ability. Moreover, in the Qur’an, collocates of ‘*yamlīk*’ and its variant forms—*mālik* and *malik*—portray a distinction whereby humans are owners whereas statues and structures cannot own even a *qitmīr*, which is the membrane of a date seed (Q. 35:13). The verse implies that humans are owners of various goods in life. On the other hand, God reserves complete control over mostly abstract concepts such as sustenance, benefit, harm, life and death.

The collocation analysis reveals that the Qur’an clearly accepts humans as being owners and possessors of material substances but makes humans conscious of the fact that they are not in absolute control. Thus, the semantic portrayal of ownership (*milkiyya*) in the Qur’an is antithetical to Bakrū’s notion of one not being able to own what one has no control over. Rather, the very fact that one is not in control is the aim of the Qur’anic message while establishing that humans have been allowed ownership. This ownership extends to things that God created Himself including slaves, a concurrent issue during the time of revelation.

The fact that slavery was tolerated in Islam through Qur’anic sanction and the Prophetic mandate is one of the strongest defences against the ownership argument. Islam did not institute slavery, but it certainly did not abolish it, although emancipation was seen as a highly recommended act of worship (Brown 2019). Clarification is required that the point of this rebuttal is to demonstrate that the ownership argument is not consistent and should not be construed as an argument for the return of slavery.

Secondly, some have questioned whether the ownership argument really has any legal basis. The former grand *muftī* of Lebanon, Muḥammad Rashīd Qabbānī, argues that to explore the issue from the angle of ownership is incorrect as no one disputes this fact (Qabbānī 2003). Qabbānī maintains that the issue needs to be tackled from the point of view of discretionary rights and not ownership. By employing the rights argument, one is able to arrive at a decision on the extent of discretion that humans have over their bodies. Qabbānī maintains that the human body is a site where both God and humans share a claim on it and people’s right over their bodies is privileged over God’s right. While Qabbānī’s argument does not neatly establish the permissibility of organ transplantation and donation, he manages to create a space to discuss bioethical issues related to the human body without having to discuss the ownership question (for a detailed commentary and translation of Qabbānī’s discussion see Ali 2019b).

For the Qatar-based Egyptian scholar, Yūsuf al-Qaradāwī, human organs and limbs are similar to wealth, since both of them have been given to humans by God, and therefore fall under the same ruling related to wealth. The only difference is that the restriction to donate organs is slightly stricter than donating wealth (Al-Qaradāwī 2009). Al-Qaradāwī’s reading of the Prophetic statement ‘Every good is charity (*sadaqa*)’ goes beyond financial help and extends to any form of the ‘good’—one example of which is organ donation.

Finally, the ownership argument fails in the case of blood transfusion. With the exception of Khān, all other proponents acknowledge that blood transfusion is permissible. This contradiction is a methodological flaw in their argument, since blood, albeit regenerative, nevertheless is a part of the human body, which according to their argument should be forbidden since one does not have complete control over their own blood. These scholars respond that the permissibility of blood transfusion is based on the issue of selling human milk which is permissible. This argument is problematic from numerous angles. First of all, it contradicts the original argument about control as a basis for the prohibition of organ transplantation. Secondly, blood is categorically mentioned as one of the forbidden and impure substances in the Qur’an which these scholars believe does not have any curative value. Despite this notion, these scholars allow transfusion whereas they do not allow organ transplantation about which the scripture is silent (Moosa 1998). Finally, the analogy with milk is an incorrect one as the former is permissible and pure, while the latter is impermissible and impure.

4.2. The Dignity Argument

Stemming from the argument that the human body is a trust from God, who is the true owner of the body, is the issue of human dignity (*karāma* and *ḥurma*). Organ transplantation violates this dignity and therefore it is impermissible. The Qur'an in numerous verses mentions that God has dignified and honoured the human being (Q. 17:70). Violation of this dignity is measured in two ways: (1) degradation (*ihāna*) and (2) mutilation (*muthlā*). While retrieving organs, which prolongs the funeral is not in and of itself mutilation, however, since it prolongs what naturally should be done (i.e., burial), it is deemed to be an infraction of that dignity (Krawietz 2003). Furthermore, viewing the dying or dead person as a potential repository for organs relegates the value of the human to that of a means to an end.

The degradation (*ihāna*) intensifies when physical intervention into the body is involved. Any form of incision into the human body, dead or alive, without it having any physical benefit to the donor (*iṣlāḥ al-badan*) is deemed mutilation. By way of evidence, a conversation in the Qur'an between God and Satan regarding how the latter will lead people astray is presented. According to Qur'an 4:119, Satan announces to God that one of his major ploys to lead people astray from God's way is by seducing them to mutilate and change the creation of God. The above verse, coupled with a Prophetic statement, 'breaking the bones of the dead is like breaking the bones of the living,' is the final nail in the coffin against organ transplantation (Ibn Mājah, *bāb fī al-nahyy fī kasr 'izām al-mayyit*, cited in Al-Bassām 2003). For the proponents of the first position, organ transplantation is an evil anticipated by the Prophet and an instantiation of the self-fulfilling prophecy of the devil.

Scholars have responded that while the Qur'an declares that humans have dignity and are honoured, it has not laid down concrete guidance as to how this dignity is to be actualised. Therefore, it is left on society to decide how to define dignity (Raḥmānī 2010; Butt 2019). Al-Bassām (d. 2002) mentions that mutilation (*muthlā*) has a specific understanding in Arabic relating particularly to the context of war. Mutilation in Arabia was used as a form of weapon employed to cause hurt to the living by desecrating their loved ones. Malignant intention is a prerequisite of mutilation. Al-Bassām argues that this understanding of mutilation cannot be transposed on to precise surgery carried out in a clinically sterile environment at the hands of a qualified surgeon for the sole purpose of saving someone else's life (Al-Bassām 2003). Furthermore, he argues that to deem organ transplantation as an example of the actualisation of Satan's prophecy is misplaced and an incorrect stretching of the meaning of the verse. Thus, a close reading of the Qur'an reveals that mutilation in this context relates to certain occult practices involving cutting off of animal organs (especially the male-born of the five-year-old camel) to ward off evil from the rest of the flock (Al-Bassām 2003, p. 40).

4.3. Organ Transplantation in Secondary Literature

In addition to using generic verses regarding God's ownership and human dignity from Muslim scriptures, scholars of the first position draw upon the Islamic legal literature which includes both abstract legal maxims (*al-qawā'id al-fiqhiyya*) as well as legal precedents (*furū' al-fiqh*) in order to fortify their position. Legal maxims are a set of principles derived from scripture to which legal scholars (henceforth, *fuqahā'*) resort to in new arising situations in the absence of firm textual evidence (Rabb 2010). The maxims are an eclectic mix of categorical moral imperatives and utilitarian statements. Some of the legal maxims employed by advocates of the first position include (1) Harm is not to be removed by another harm, (2) harm is not to be removed by similar harm, and (3) that which one cannot sell, cannot be gifted (Al-Shinqīṭī 1994, p. 365).

These legal maxims are abstract guiding principles that do not fit neatly with the issue at hand. For example, the first maxim can easily be challenged by questioning (in the case of cadaver donation) whether any harm is inflicted on the donor. Moreover, should not the 'net benefit' of a transplant be considered over the 'gross harm' (if any) involved in the procedure? More will be said about this further down. The abstract nature of the legal maxims makes them harder to pin down neatly to any given case as opposed to legal precedents. Advocates of the first position are on more solid ground when they employ these precedent cases from the legal literature (*furū' al-fiqh*).

The precedent cases allow scholars to extend them to the ruling of organ transplantation by way of analogy (*qiyās*). A benefit in using this method is that it is based on precedents set by previous scholars; contemporary scholars are in good company as they do not need to venture into uncharted territory. However, a problem with this approach is that, in their zeal to veer closely to a text as far as possible, scholars may infer wrong analogical reasoning from the precedents resulting in an incorrect legal ruling for the issue at hand. Two precedent cases presented by the advocates will be explored here. The human dignity argument established from the Qur'an demands that human beings are not a means to an end. Based on this Qur'anic command, the medieval *fuqahā'* declared any therapeutic use of human teeth, hair and bones to be forbidden except for the owner of these items (Nizām al-Dīn 1991). The Syrian scholar al-Būṭī (d. 2013) argues that the examples adduced in the medieval law books relate to cosmetic enhancement of the human (*taḥsīm*) and is not to be confused with modern invasive life-saving technology which falls under the degree of necessity (*ḍarūra*). Islam allows such exceptions to the laws in the case of necessity only (Nyazee 2016, p. 185). Al-Būṭī explains that the examples are correct in that no one argues for the use of human remains for cosmetic enhancement, but they are not accurate legal precedents for organ transplantation (Al-Būṭī 1988). The *ḍarūra* argument has been labelled as the 'breaker of all rules' argument (Brown 1999). However, one can question whether the relaxing of a Shariah law in the presence of necessity is absolute? Are there situations where the necessity rule does not apply?

4.4. Cannibalism and Anthropophagy

Proponents of the first position believe that the 'necessity' rule should not be used recklessly. The rule fails in circumstances like the consumption of human flesh (anthropophagy) in times of dire necessity such as in a famine where no other source of food is available. The logic of using this argument is that if it can be established that consuming human flesh is permissible in dire necessity, which is the ultimate aggression inflicted on the human body, then organ procurement will be *a fortiori* permissible. However, medieval Muslim scholars were not unanimous on the issue of anthropophagy which led to contemporary scholars dually employing it to prove contradictory opinions. Shafī' and his colleagues from the Indian sub-continent stuck to the position of the Ḥanafī school of law which argues that any form of anthropophagy is forbidden even in a life-threatening situation. Others accept the position of the Shāfi'ī school of thought, which is the most lenient on this issue. Al-Būṭī argues that the Shāfi'ī permissibility of anthropophagy is in line with the broader objective of the Shariah (*maqāṣid al-sharī'ah*).

The anthropophagy argument features early on in the organ transplantation debate (Shafī' [1967] 2010). However, one may ask whether the analogy between consuming human flesh and procuring and transplanting an organ is correct and symmetrical? Can there be any parity between eating human flesh and transplanting human organs? In the case of the former, it is most likely that the person is found dead; his flesh is consumed, gnashed with the teeth, swallowed, digested and excreted. Anthropophagy is in stark contrast to removing an organ in a sterile environment at the hands of professional surgeons and then equally transplanted into a recipient, taking every care not to harm or perforate the organ in any way that renders it useless. The image that is conjured up by the first scenario is bloody and brutal; an image that vividly depicts mutilation in every sense of the word. One needs to ask whether the same revolting thoughts are conjured in the mind when talking about organ transplantation.

4.5. Social Ills

Organ transplantation is more or less accepted throughout the world as an effective life-saving technology. Why then are the scholars from the first position so adamant to forbid it? Are they against the saving of life, which is a religious imperative? In addition to viewing the act of procuring, donating and transplanting an organ as a violation of religious sensibilities established from scripture and Islamic law, these scholars were wary of the negative effect that their *fatwas* will have on their society. There is a genuine fear on their part that in the absence of government-supported transplant programs in Muslim countries, *fatwas* on the permissibility of organ donation will legitimise the

demand for organ harvesting—the supply of which will most likely come through illegal organ trafficking and black market organ trade (Shafi‘ [1967] 2010, pp. 55–59). Pakistan, during the time Shafi‘ wrote his *fatwa*, had no government-supported organ transplantation programme. Moazam maintains that transplantation is still being carried out in private transplantation centres—one of which was her fieldwork site (Moazam 2006).

Exploitation of the weak and poor for health tourism reasons is a common problem in third-world countries. The public in Egypt was already aware of numerous scandals involving organ transplantation. The televangelical cleric, al-Sha‘rāwī, did not bring them anything new when he campaigned against organ transplantation. For the Egyptian people, al-Sha‘rāwī’s fiery brimstone preaching confirmed their anxiety and suspicion regarding the efficacy of organ transplantation. Farmers in Egypt already faced the repercussion of consuming crops treated with pesticides by government contractors in the form of mass renal failure. Furthermore, stories of children kidnapped from orphanages to service organ tourists, and missing eyeballs of dead relatives preserved in state hospitals left a very bitter taste in their mouths (Hamdy 2012).

Concomitant with the exploitation argument, some scholars are worried that allowing organ transplantation will lead to a slippery slope practice resulting in the complete annihilation of the human (corpse). In Islamic legal theory, such an argument is known as ‘blocking the means’ (*sadd al-dharā‘i’*), which tends to look at the future rather than the present. Shams Pirzādah from the Indian Fiqh Academy argues that allowing organ transplantation will set off a conveyor belt motion which starts with organ donation, leading to organ transaction, emerging into doctors using human bones and skin to make medicine and end up with doctors playing God (Qāsmī 1994, pp. 191–95). Others argue that the ultimate dignity of the human being is to deposit the decedent’s body into the earth. If organ transplantation is allowed, there will come a point where potentially every limb, organ, bones, and tissues of the human being can be put to manufacture mundane things like bags and soap with nothing to bury in the grave (Mawdūdī cited in Al-Sanbhālī 1987, p. 54). The legalisation of organ donation will thus ultimately result in a situation where the entire human corpse is put to use with nothing to bury.

4.6. Cultural Imperialism

An alternative argument against organ transplantation comes from the Moroccan Scholar ‘Abdullāh bin Sīddīq al-Ghumārī (d. 1993). Where al-Sha‘rāwī emphasised how organ transplantation encroaches on God’s sovereignty and Shafi‘ argued against human exploitation, for al-Ghumārī the issue boils down to cultural superiority. Al-Ghumārī sees in permitting organ transplantation a self-fulfilling prophecy of the Prophet Muhammad. Al-Ghumārī writes,

Organ transplantation is something which is prevalent among European doctors and Muslim doctors followed them suit. This is a grave mistake because the religion of Islam honours the dead. ... However, people hasten to blindly follow the Christians in everything that comes from them bringing to truth the saying of the Prophet, “You will blindly follow the ways of the previous communities span by span, cubit by cubit” (Al-Ghumārī 2007).

Some Egyptian scholars and the public also viewed invasive technological advancements as a way of Westernisation and individualisation of Egyptian society and an erosion of traditional, religious and cultural values (Hamdy 2008, 2012). Al-Sukkarī argues that many of the new technological and medical progresses which have seeped into Muslim culture were manufactured by non-Muslims who have no understanding of Islamic principles and ethics, these include narcotics in medicine, organ transplantation, gender reassignment surgery, surrogacy, IVF treatment, milk banks, sperm banks and determining the sex of the foetus. Al-Sukkarī argues that since these advancements were not developed by Muslims, they lack an infusion of Islamic ethics, which renders them impermissible (Al-Sukkarī 1988, p. 121). Hamdy argues that to view the debate as a clash of civilisation is a misdiagnosis of the issue. Hamdy contends that as long as the issue remains misdiagnosed, legitimate worries about the exploitation of marginalised patients will remain

unaddressed, which will further impede the establishment of a national transplant programme (Hamdy 2013, p. 149).

The forgoing was a discussion of the major arguments and evidence provided by the proponents of position one. There are other arguments associated with this position which include the body or soul feeling pain during organ procurement from a cadaver donor, anxiety over being resurrected with a missing organ or limb in front of God, negative traits of the donor being passed on to the recipient through transplantation especially from a non-Muslim and the question of whether an organ renders impure once separated from the body and its ramifications on the recipient vis-à-vis performing acts of worship in this state. Unfortunately, space does not allow us to elaborate on all of these points.

5. Position 2: Organ Reception and Donation are both Permissible

Organ transplantation surgery is routine practice today throughout the world. The procedure is viewed as one of the best technological advancements for the betterment of society. Proponents of the second position conform to this understand and have declared both organ reception and donation to be permissible in all iterations, living and dead, determined through circulatory and/or neurological criteria, with certain caveats. This is the opinion of the Islamic Organisation for Medical Sciences (IOMS)³ of Kuwait which arrived at a resolution in its second conference on the topic of beginning and end of life in Islam in 1985 (IOMS 1985, cited in IIFA). This was followed by the resolution arrived at by the International Islamic Fiqh Academy (IIFA) of Jeddah in its 3rd conference held in Amman, Jordan in 1986 (IIFA 1986) and again in 1988 in its 4th session in Jeddah where death determined through neurological criteria was deemed as Islamic death (IIFA 1988). It is also the opinion of eminent Muslim scholars such as the former rector of Al-Azhar University Sayyid al-Taṭṭāwī (d. 2010) (Hamdy 2012, p. 48), Yūsuf Al-Qaradāwī (2009) and Khālid Sayfullāh Rahmānī (2010). A similar *fatwa* was issued by Zaki Badawi in the UK in 1995 (which is being used by the NHS) (Badawi 1995). The resolution is also that of the *European Council for Fatwa and Research* (ECFR), which was declared in the 6th session in 2000 and is the opinion which is becoming the most popular in the Muslim world as transplant medicine advances and people become more aware of the need of and benefits for transplantation (ECFR 2000; Islamic Religious Council of Singapore 2015; The Ministry of Health Malaysia 2011).

As previously mentioned, the issue of organ transplantation falls within the domain of legal discretion (*ijtihād*) since there is nothing clear cut in Muslim scripture on the topic. Despite this, proponents of position two believe that the spirit of the Qur'an and hadith is conducive to organ transplantation and donation. These scholars arrive at this decision by joining numerous disparate themes found in the Qur'an and hadith together. These include the necessity to save one's life, the exhortation to save another's life, human dignity and honour, and charity.

5.1. Organ Reception

The justification for receiving an organ in a life-threatening or life-enhancing situation is easily justifiable from multiple Qur'anic verses permitting the consumption of prohibited (*ḥarām*) ingredients in dire necessity. A typical example of such verses is found in the second chapter of the Qur'an,

He has only forbidden you carrion, blood, pig's meat, and animals over which any name other than God's has been invoked. However, if anyone is forced to eat such things by hunger, rather than desire or excess, he commits no sin: God is most merciful and forgiving' (Q. 2:173).

³ IOMS: Islamic Organisation for Medical Sciences (of Kuwait), *al-Munazzama al-Islāmiyya li al-'Uluṃ al-Tibbiyya*

While opponents of organ transplantation circumscribe this verse to food products only, the proponents find no reason not to extend it to all cases of dire necessity (Al-Yahyāwī 2016, p. 153). Hence, the proponents argue that such verses also extend to medical treatment using prohibited ingredients and methods (Al-Ya‘qūbī 1987). This is further exemplified through an incident involving one of the companions of the Prophet. ‘Arfaja severely injured his nose in a battle. Per Arab medical practice at the time, he made a mould out of silver and fixed it in the place of his nose. After a while, it started to become putrid and the Prophet permitted him to make a mould out of Gold (Abū Dāwūd, *bāb mā jā’ fī rabṭ al-asnān bi al-dhahab*, cited in Al-Bassām 2003). Gold is a prohibited item of jewellery for men, but the Prophet allowed it for ‘Arfaja due to his particular circumstance. Such guidance from the Qur’an and prophetic practice are further enshrined as legal maxims to facilitate scholars in arriving at decisions where the scripture is conspicuously silent such as: necessity permits the prohibited, hardship facilitates ease, needs (*hāja*) shares the same legal ruling of necessity (Abū Zayd 1988).

5.2. Organ Donation

Where the justification for receiving an organ is easily demonstrated from the Qur’an and hadith, the same cannot be said for organ donation. Here, the scholars employ numerous unrelated pieces of evidence organised logically, allowing them to arrive at the conclusion that organ donation is permissible. The first of these is the above verse read in tandem with the verse, ‘Do not contribute to your destruction with your own hands’ (Q. 2:195). These scholars argue that while it is necessary for a person in trouble to save themselves, it is a duty for others to facilitate this saving lest it results in the troubled person perishing. This is a collective duty (*fard kifāya*) where everyone will be sinful if no one carries it out (Al-Qaradāwī 2009, p. 38). Furthermore, to save a life is one of the objectives of the Shariah which the Qur’an equates to saving the entire human race, ‘If anyone saves a life, it is as if he saves the lives of all mankind’ (Q. 5:32). Al-Qaradāwī, quotes the saying of the Prophet, ‘Whoever can benefit his brother, he should’ (*Ṣaḥīḥ Muslim, bāb al-salām*) and the second Caliph Umar’s recommendation to Muḥammad Ibn Maslama, ‘If you have a thing which will benefit your brother and not harm you, why do you resist using it?’ (Muwaṭṭā Mālik, *kitāb al-aqḍiyya* cited in Al-Qaradāwī 2009, p. 44).

The issue of charity and altruism have been invoked as further evidence and encouragement for organ donation. ‘They give them preference over themselves, even if they too are poor: those who are saved from their own souls’ greed are truly successful,’ the Qur’an reads (Q. 59:9). This verse has led to the justification of numerous actions which otherwise would have been prohibited such as a bystander putting themselves in way of danger to protect a drowning person or a burning person (Qabbānī 2003, pp. 64–65).

5.3. The Greater-Good and Lesser-of-Two-Evils Argument

One of the main arguments put forward by proponents of organ donation is that the net benefit of organ donation to the recipient outweighs the gross harm incurred on the donor. These scholars argue that there is no such thing as absolute benefit or absolute harm but a mixture of the two (Qabbānī 2003, p. 63). The legal ruling of permissibility or impermissibility will follow the preponderance of benefit or harm in any situation respectively. To illustrate this point, proponents use two precedent cases from medieval Islamic legal literature. The case of a deceased pregnant woman, where there is a high probability that the baby in her womb is alive; and the deceased, who had devoured someone else’s wealth and died. All of the schools of thought are of the opinion that if a pregnant woman dies and her baby is still alive in the womb and a high probability that the child will remain alive at the moment of extraction, it is permissible to open her womb and save the baby (Al-Ya‘qūbī 1987, pp. 80–88).

The ḥanafis argue that if it is known for sure that the baby will live, it is obligatory to open the womb, otherwise it is permissible. An opinion from Mālik and the position of the ḥanbalī school is that it is not permissible to cut open the deceased’s womb. A closer look at ḥanbalī argument reveals that they believed, given the state of technology at that time, that it is never possible to save the child

in such a situation—as a result of which, violating the corpse is futile (Al-Ya‘qūbī 1987, p. 60). Ibn Qudāmah writes, ‘according to us (ḥanbalīs), it cannot be established whether the child is alive or not, even then, the child normally does not survive. Hence, it is not permissible to violate the real dignity of the deceased for a doubtful (*mawhūm*) matter (Ibn Qudāmah cited in Al-Ya‘qūbī 1987, p. 60). Similar to the above, all schools of thought agree that when a person swallows another person’s possession, such as jewellery, and then dies, it is permissible to exhume the corpse and extract the valuable by cutting open the abdomen (Al-Ya‘qūbī 1987, pp. 80–88).

Proving the permissibility of organ donation is difficult based on the above points as they provide no explicit evidence that organ donation is permissible. Nevertheless, the point was to demonstrate that the dignity of the dead is not absolute (Al-Būṭī 1988, p. 197). Muslim scholars have allowed dignity to be violated to a degree for the sake of achieving a greater good. In the case of the deceased woman, preservation of a new life surpasses the dignity of the mother’s corpse. Similarly, the fact that the deceased swallowed someone else’s wealth, they have automatically forfeited their right to bodily integrity. In both these cases, the principles of preservation of life and preservation of wealth are at play. Both of these are viewed as greater benefits than the harm caused to the deceased. Advocates of the second position extend the same analogy to organ donation. Advocates argue that while there is minimal harm to a living donor (which is arrived at after thorough medical check-up), and hardly any harm to the dead donor, the benefit it brings to the recipient is life saving or life enhancing. However, does mere necessity warrant violation of the dignity of the donor, dead or alive? Do the donors have a right over their bodies? Does God have a right over the body of the donor?

Proponents of this position are aware of these questions and retort that the donor voluntarily forfeits their right over their bodies through their consent (Al-Qaradāghī 2011, p. 55). Without the consent of the donor, procuring their organs is not permissible irrespective of the life-threatening effect that it will have on the recipient. However, what about God’s right? Since God has a claim over the human body, can the donor make that choice on behalf of God? ‘Ārif Al-Qaradāghī provides a formula for knowing whether God sanctions an action or not (in the absence of clear instructions from Him). Al-Qaradāghī posits that God is good and ultimately does things for the betterment of people. If by comparing the harm and benefit of an action, the net harm is greater than its benefit, then God’s consent ceases to exist in that thing and it is deemed to be prohibited. However, if the net benefit preponderates the harm, then it can be assumed that God is happy to sanction this action (Al-Qaradāghī 2011, p. 55). If the harm to the donor is greater than the benefit to the recipient, for example as a result of donation the donor falls terminally ill, then organ donation is not permissible. Conversely, if the donated organ saves the life of the recipient or restores a basic function of the body with minimal harm to the donor then organ donation is permissible. The benefits incurred from a living donor, although lifesaving, is still less compared to the benefit gained from a cadaver donor. This imbalance is because, in a live donation, only organs which do not lethally harm the donor are donated, such as one kidney, blood and some tissues. However, restricting donations to living donations alone only reduces the pool of organs available for transplant. All vital organs need to come from cadaver donors. However, what is death and for the purpose of organ donation, how is death to be understood?

5.4. Death and Organ Donation

Death is understood as the ‘the irreversible loss of that which is essentially significant to its nature’ (Veatch and Ross 2015, p. 54). To put it another way, at what point can death-related activities such as the distribution of inheritance and preparation of burial be enacted? In Islam, death translates to the exiting of the soul from the human body (*Encyclopedia of Islamic Jurisprudence* 1988–2006, 39:248). The Qur’an describes this phenomenon in the following verse, ‘He is the Supreme Master over His subjects. He sends out guardians to watch over you until, when death overtakes any of you, those sent by Us take his soul—they never fail in their duty (Q. 6:61).’ Death from this point of view is a metaphysical phenomenon which cannot be empirically verified. Nevertheless, medieval Muslim scholars associated the flowing of essential fluids (blood and breath) in the body with the presence

of the soul and its loss with its exit. When in doubt, they opted for putrefaction, to leave the body until the stench of rotting flesh can be smelt (Ibn 'Ābidīn 1992, 2:193).

This is the common-sense understanding of death. In other words, certain physical criteria were observed as an indicator of the exiting of the soul. Two words are normally associated with the word 'soul', '*rūh*' and '*nafs*'. The word '*rūh*', when referred to as a material disembodied body, is translated as 'spirit'. There is only one occasion in the Qur'an (Q. 17:85) where the word '*rūh*' can possibly refer to the human soul and most commentators believed it to be so. '[Prophet], they ask you about the *rūh*. Say, 'The *rūh* is an order ('*amr*') of my Lord. You have only been given a little knowledge.' (Q. 17:85). If this is the case, then per Qur'anic instruction, it is not possible to define what the soul/*rūh* is. However, a linguistic concordance analysis reveals that every instance of the usage of the word '*rūh*' in the Qur'an either refers to the angel Gabriel, or Jesus Christ, or revelation, or the Spirit that God breathed into Adam's mould. In fact, in addition to Q. 17:85, there are two other verses where the word '*amr*' is associated with the word '*rūh*' and in both these verses, the word '*rūh*' either refers to the angel Gabriel (Q. 42:52) or revelation itself (Q. 40:15).

What the above analysis reveals is that it is highly unlikely that the word '*rūh*' in Q. 17:85 is referring to the 'human soul' which one can never know. On the other hand, the word '*nafs*' has multiple meanings in the Qur'an, and its translation as 'soul' is not contextually appropriate in all its usage in the Qur'an (Sachedina 2011, p. 148). Thus, it refers to the: self (Q. 2:9), human being (Q. 2:72), life (Q. 2:155), reflective pronoun (Q. 2:187), inner disposition (Q. 2: 235), soul (Q. 3:185), spirit (Q. 4:1), evil self (Q. 5:30), exiting of the soul (Q. 6:93), extraction of the soul at the time of death (Q. 39:42), self-reproaching soul (Q. 75:2), and the content-soul returning to God (Q. 89:27). The different usage of the word '*nafs*' reveals that it does not only refer to the 'soul' but as the human as an integrated being involving, physical life, psychological disposition with its evil thoughts and self-reproach and the spiritual soul which returns to God (Sachedina 2011, p. 148). This integrated capacity of personhood, viewed as a vital force, makes a human a human and its absence is deemed as the onset of death.

5.5. Organ Donation and Death Determined through Neurological Criteria

While death determined through circulatory criteria is what corresponds with a common-sense understanding of death, organs retrieved through such determination of death are not always prime. This is due to the gradual destruction of the organ's cells as a result of oxygen deprivation. Technological advancement in intensive care techniques gave birth to the brain-based concept of death towards the end of the 19th century (Machado et al. 2007, p. 197). The concept merged with organ transplantation after the publication of the 'Harvard Ad Hoc Committee report in 1968 entitled 'A Definition of Irreversible Coma' (Veatch and Ross 2015, p. 52; Machado et al. 2007, p. 198). Henceforth, the success of transplant improved with the refinement and development of the brain-based death concept (Machado et al. 2007, p. 198). Organ retrieval from brain-dead patients became the major and primary source of organs due to their quality as a result of the decedent being artificially ventilated and perfused. Advocates of whole brain death (USA) or brain stem death (UK) believe that irreversible loss of vital brain functions is akin to the death of the organism. It should be understood that such criteria for death are unprecedented in human history. Prior to the invention of life-support machines, this situation would not have arisen. A terminal and lethal injury to the brain would have meant all vital functions of the body including breathing and heartbeat would have ceased. Death determined using neurological criteria was only possible because of such 'new death-assaulting technologies' (Veatch and Ross 2015, p. 53).

The clinical diagnosis of brain death as actual death is more or less standard practice all around the world although there are disparities in how one arrives at this diagnosis (Veatch and Ross 2015, pp. 52–63). Muslim scholars like al-Ṭantāwī argued that determining the onset of death falls outside of the jurisdiction of Islamic scholars, and that physicians have full authority over this matter (Hamdy 2012, p. 48). In 1985, the IOMS in Kuwait recognised brain death as Islamic death. And the declaration of the IIFA in 1986 and 1988 led to transplantation centres opening up in Saudi Arabia. However, how did these scholars arrive at the decision that brain-based death is actual death?

5.6. The Rūh, the Brain and Death

As we have mentioned above, the soul is not an unknown entity that cannot be tracked. For scholars of position two, the soul is the vital force that animates the human being. Medieval Muslim scholars also recognised this function of the soul. Ibn al-Qayyim al-Jawziyya (d. 1350), the 14th-century ḥanbalī scholar of Damascus, asks what the constituent parts of the *rūh*/soul is made up of. Is it the sum of disparate human body parts; is it soul and body; is it a combination of the four humours or is it the circulation of blood? He asks if it is the soul that ascends to the brain; or is it a subtle matter which is born on the left side of the heart and circulates around the body through the veins or if it is an integral part of the heart (Al-Jawziyya 2011, p. 520) 520. Ibn al-Qayyim opts for the definition that,

It is a living, animated, subtle, heavenly illuminated mass (*jism nūrānī ‘ulwī ḥayy khafif mutaharrrik*) which permeates the essence of the organs and circulates in them like the way water flows in a rose or oil in the olive or fire in the coal (Al-Jawziyya 2011, p. 521).

He argues that as long as the body parts are capable of being influenced by this subtle mass, the latter remains integrated with the organs and it benefits the organs with sensations and voluntary movement. However, when the organs are destroyed because of the overpowering of a foreign object and are no longer capable of accepting the effects of the *rūh*, this is an indication that the *rūh* has departed and passed on to the realm of the soul.

For advocates of the second position, the above description of the soul's integrated functionality with the body corresponds with the brain's integrated relationship with the body. An irreversible loss of the brain's vital functions, for the advocates, is an indication that the soul has moved on and the person is no more. This soul–brain–body relationship did not go uncontested. For advocates of the next position, the brain-death criteria throw up more problems than it can solve (see Padela and Bassler 2012 for a detailed exploration of these issues).

6. Position 3: Organ Retrieval after Brain Death Not Allowed

While advocates of this position allow organ reception and donations from living and circulatory-death patients, they have serious reservations when it comes to allowing organs to be retrieved when the death of the donor was determined using neurological criteria. For these scholars, it creates a peculiar situation—a betwixt and between position—where the patient is dead from one perspective and yet has signs of the living from another such as warmth, a heartbeat and breathing. Some argue that the prognosis of death has been confused with its diagnosis, and the death of the organism is being conflated with the death of an organ. The fact that certain somatic activities such as breathing, albeit mechanically, is present, is an indication of the presence of the soul in the body. Termination of life at that moment is tantamount to killing a dying yet living human being.

Numerous high profile scholars hold this view including the former grand *mufī* of Egypt and one-time rector of al-Azhar, Gād al-Haqq ‘Alī Gād al-Haqq (d. 1996) (1979); the Syrian scholar Muḥammad Sa‘īd Ramadān al-Būṭī (d. 2013) (1988) and the opinion of another former grand *mufī* of Egypt, Ali Gomaa Mohammed (2003). This position is also taken by the author of the latest independent fatwa commissioned by the NHS, Muhammad Zubair Butt (2019).

While an international conference convened by the Islamic Fiqh Council (IFC) of Mecca in 1985 declared cadaver organ retrieval to be permissible, it did not deal with the thorny issue of organ procurement from brain-dead patients (IFC 2003). In a later, unrelated conference held on October 1987 deliberating on the legal status of removing artificial ventilation machine from a brain-dead patient, the conference resolved that while it is permissible for doctors to switch off the life-support machine in such a situation, the person will not be declared Islamically dead until complete cessation of heartbeat and breathing has not taken place (IFC 2010, p. 231). This latter decision, although not directly related to the organ retrieval process must be read in tandem with the former cadaver organ donation position.

The issue of brain-dead organ retrieval is a deadlock situation borne out of competing worldviews and ontological understandings of what a human being is. While advocates of position

two associate the soul and death with vital brain functions, proponents of the third position opt for a more traditional understanding of death, the complete cessation of vital fluids (breathing and circulation of blood). Al-Būṭī calls this the common understanding of death which everyone recognises. In his conference discussion, al-Būṭī mentions that he does not dispute the medical diagnosis of death but argues that death is a single occasion which is understood by all and not just the elite doctors. Al-Būṭī's barometer for ascertaining death is not a highly trained surgeon, but the common man. Death is what the average person understands it to be. Al-Būṭī writes,

Death is “the complete separation of the soul from the body”, or to put it differently for those who do not recognise the soul, “it is the complete cessation of life from the body.” We do not think that there is anyone who will disagree with this understanding of death (Al-Būṭī 1988, pp. 205–6).

For al-Būṭī, the only Islamically reliable indicator for the onset of death is the weakening of the pulse and the cessation of heartbeat. One can argue that this is not a correct Islamic indicator of death, since there is no association of the departure of the soul with the cessation of heartbeat in Muslim scripture. Al-Būṭī further argues that using the legal tool ‘presumption of continuity’ (*istishāb al-asl*), the continuity of the life of the imminently dying person is certain while depending on which criteria one uses to diagnose death, his death is uncertain. The certainty of life cannot be removed by the uncertainty of death determination using neurological criteria. For al-Būṭī, as long as the heartbeat remains, even if artificially, the person is alive and no declaration of death can be pronounced (Al-Būṭī 1988, p. 208).

Finally, a quick word must be said about the recent NHS Fatwa on organ donation. While it is clear that the author, Zubair Butt, does not support a brain-based diagnosis of death, his position on circulatory death can easily be misunderstood. At first glance, it seems that Butt is a supporter of organ retrieval from circulatory death patients. However, on closer look, Butt is much more restrictive than what appears to be the case. Butt introduces two concepts into his position, concepts which are not a part of the Islamic discourse but taken from secular bioethicists such as Don Marquis, Miller and Trog (Veatch and Ross 2015, p. 44; Butt 2019, pp. 99–102). These two terms are ‘permanence’ and ‘irreversibility’. ‘Permanence’ is the irreversible loss of circulatory functions due to legal or moral reasons, for example, the decedent willed not to be resuscitated after cardiac arrest even if it is medically possible to do so. ‘Irreversibility’ is what is known as medical or biological irreversibility; the point at which no amount of medical intervention will kick start the heart. Butt writes,

“While contemporary Muslim scholars have recognised cardiorespiratory 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, while 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 (donation from circulatory death) is not permissible until the point of elective irreversibility has lapsed” (Butt 2019, p. 100).

On the above basis, for Butt, only tissue donation and cornea donation from the deceased are allowed as these are possible to retrieve after the point of elective irreversibility has elapsed.

Variations to the 3rd Position

Some scholars advocated a third position between the living and dead, which they called *al-hayy fi ḥukm al-mayyit*, living but legally dead (Al-Ashqar 1987, p. 671). This was the opinion of the late Jordanian scholar Muḥammad Sulaymān al-Ashqar (d. 2009) who argued that from one perspective we can treat a brain-dead person living and therefore some of the rules of the living will apply to him, for example, the distribution of his wealth to his inheritors and his wife sitting in for the *idda* period will only take place after complete cardiac arrest has taken place. However, from another

angle, we may deem him to be dead and therefore treat him as we treat the dead, and therefore his organs can be procured and treatment can be withdrawn.

Precedents in Islamic law manuals exist for similar types of deaths where a person has somatic activity but is yet declared to be legally dead. Scholars discuss the case of the movement of a 'slain person' (*madhbūh*) who still has some semblance of biological life and yet for legal reasons declare him to be dead. Thus, these scholars argue that if the slain person's father was to die after him, the slain person will not inherit anything from him, for he is legally dead and the deceased do not inherit (Al-Taḥṭāwī 1997, p. 597; Al-Ashqar 1987, p. 668). Unfortunately, al-Ashqar did not develop his ideas further—as a result of which, we do not know what criteria are being used to say the person is dead in respect of this law and alive in respect of that.

7. Position 4: Higher Brain Functioning and Organ Retrieval

Dr Rafaqat Rashid, a Muslim scholar and medical doctor from the UK, moves the debate concerning death to a slightly earlier time. Rashid argues that death is the permanent loss of capacity of higher brain functioning including the cessation of volition, sentience, and voluntary action. This is when the rational soul has permanently lost its capacity of control of the critical human and rational components of the body. Rashid views the functions of the soul described by Ibn al-Qayyim al-Jawziyya above and other scholars like al-Ghazali as the soul's control over most of the conscious activities which also resembles the cerebral cortex's higher brain functions (Rashid forthcoming 19; Veatch and Ross 2015, pp. 88–100). Al-Ghazali argues that the soul is the primary integrator of the entire body's functions and its departure is equivalent to the collapse of this integrated bodily functioning. This is exactly the function of the brain or more specifically the cerebral cortex vis-à-vis the body.

However, are there any criteria that will ascertain the permanent loss of higher brain functioning? Rashid accepts that while the cerebral cortex is the nearest instrument and implement of the rational soul, it is impossible to draw a clear distinction between a sentient person and a sentient non-person. Rashid concedes that in the absence of a universal accurate anatomical criterion for a higher brain formulation of death, the brain-stem death criteria should be the closest and most accurate one to employ (Rashid forthcoming 27). This understanding of the relationship between the higher brain functioning, the soul and the body leads Rashid to conclude that legally (Islamically) it will be permissible to retrieve the organs of a donor at this point. Rashid argues that the phenomenon of declaring someone dead is not the domain of philosophy, metaphysics or theology but falls squarely within the realms of Islamic law. He arrives at this conclusion through a careful reading of some paradigm cases found in the classical Islamic law manuals. By way of example, the classical Islamic law manuals state that the punishment of *qisās* (retribution for murder) can be meted out to a person who slit someone else's throat on the basis that the victim has lost all sentience, volition, sight, speech and voluntary movements permanently as long as that attack leads to the irreversible loss all voluntary and involuntary movements (Rashid forthcoming 23). While Rashid accepts that it is permissible to retrieve organs at this point, no jurisdiction in the world allows organ retrieval based on permanent loss of higher brain functioning (Veatch and Ross 2015, p. 98). The following two positions are slight variations of positions 1–3. We will mention them briefly to capture an accurate picture of the range of opinions available.

8. Position 5: Donation only Allowed from Living Donors

Proponents of the fifth position maintain that although receiving an organ is permitted, donating an organ only while alive is permissible. Post-mortem donation is not permissible. This opinion is held by a sizeable number of scholars from the Indian subcontinent and is also the resolution of the Indian Islamic Fiqh Academy held in 1989 (Raḥmānī 2010, 5:59).

Scholars advocating this position agree with the scholars of position one as far as it relates to the dignity afforded to the dead. Proponents of this position argue that the dead have sacrality (*ḥurma*), which demands that they are deposited in the state they died in. Any intervention is an affront to the dignity of the deceased and therefore impermissible. This group of scholars further erroneously

argue that since live organ donation fulfils the requirements of saving a life, turning to the dead is not necessary. Obviously, scholars from this group are not aware that their view seriously reduces the pool of organs available for donation to the non-vital organs only such as blood, bone marrow and certain tissues.

9. Position 6: Donation only Allowed from Cadaver Donors

The sixth opinion inverses the fifth position. Receiving an organ is permissible but only for donations that are to be made post-mortem and not by a living donor. This opinion is held by Aḥmad Fahmī Abū Sunna (d. 2003) from the Islamic Fiqh Council of Mecca (Abū Sunna 2003) and Muhammad ‘Abd al-Raḥmān, former grand *mufṭī* of Cameroon (‘AbdurRaḥmān 1988). Their arguments for receiving and donating organs are exactly the same as position two. Nevertheless, they restrict the procurement of organs from only cadavers and not the living.

However, for donating an organ, proponents of position six invoke legal maxims such as, ‘in the presence of two harms the least harmful must be chosen’, as well as the maxim ‘a minor harm is tolerated for the sake of a major gain’. Such maxims lead to the conclusion that only post-mortem organ donation is permissible. The argument uses the following logic: retrieving an organ from a cadaver infringes on the dignity of the deceased. The deceased has certain rights which must be protected. These include the right to bodily integrity, the right to a proper bathing, shrouding and a quick burial. Violating any of these rights are deemed as harming the deceased. However, this harm is lower and more tolerable than the harm of the loss of a life which could have been saved. For advocates of this position, the harm inflicted on the cadaver will be tolerated and its dignity infringed for the sake of a higher purpose, i.e., saving the life of a dying person.

In contrast, however, Abū Sunna argues that the living has a right to a healthy life which is mandated by the Shariah and the potential donor does not have the autonomy to violate this right. Abū Sunna believes that giving away a non-vital solid organ will eventually lead to the donor falling ill and cause further health complications. In this instance, there are two harms involved and a benefit. The harm inflicted on a healthy person, which will inevitably lead to his destruction as opposed to the harm faced by the person in need of the organ (which may lead to his death) and the benefit of a longer life should they receive an organ. Abū Sunna believes that the harm that will be inflicted on the healthy living being will be greater than the harm already faced by the dying human being. Therefore, in this situation, the harm trumps the benefit and, therefore, a live donation is not permissible.

A close reading of Abū Sunna’s arguments reveals that his position is contingent upon a particular understanding of the state of transplant medicine in the Muslim world at the time of his writing the paper, knowledge which he views as tentative medical knowledge. The advancements of transplant medicine, however, are overlooked. Critically engaging with Abū Sunna’s beliefs may lead to an alternative perspective on live organ donation. Furthermore, Abū Sunna’s view rests on medical knowledge being tentative. However, should a greater degree of success and quality of health be assured for both the donor and the recipient, Abū Sunna’s view would need to be revisited.

10. Position 7: Suspended Judgment

A seventh position suspends judgment on the issue until further investigation. This opinion is held by the Pakistani scholar Muḥammad Ṭāqī ‘Uthmānī, son of Muḥammad Shafī’. Despite his non-committed view, ‘Uthmānī allows people to take benefit from one of the permissive *fatwas* should a person require to do so (‘Uthmānī [1998] 2011; Al-Kawthari 2004).

There is a slight variation of the seventh position which is popular among some Muslims, but no serious scholar has entertained it. This opinion suggests that it is permissible to receive an organ due to necessity but not to donate one because the necessity cannot be extended beyond one’s self. The opinion is based on a narrow and individualistic understanding of ‘necessity’. We have argued above (in position two) that necessity is a two-way process. Where a person is allowed to eat/utilize forbidden objects in order to save himself from destruction, it is equally a collective obligation (*fard kifāya*) on others to facilitate this for him lest he perishes. Extended to the discussion on organ

donation, it would mean that to donate is also a religious duty since it fulfils the religious requirement of saving a person from perishing, which is a necessity (see Al-Ya'qūbī 1987, p. 32 for a fuller discussion).

While this position is legally sound (by way of analogy, one is not required to make a donation of wealth if they are able to do so, even though they were once recipients of donation), it is morally despised and opens up the Muslim community to vulnerability. It has been exploited by non-Muslim politicians as a tool to argue against Muslim integration into European society (Ghaly 2012b). The Netherlands' media portrayed Muslims as a group that donated less than the national average and mentioned the religion of Islam itself as the main cause for the lack of donors. On the contrary, Muslims in the Netherlands were found not to deviate from the average national standpoint (Zwart and Hoffer 1998).

11. Conclusions

In the above detailed exploration of the seven positions, we demonstrated that the topic of organ transplantation is not a simple right (*ḥalāl*) or wrong (*ḥarām*) answer. The matter, from an Islamic point of view, is *ijtihādī* and, therefore, people are at liberty to choose whichever position suits their culture and belief systems. The absence of any mention of organ transplantation in the Islamic sources creates a space for exploring numerous options. These options are derived from a particular understanding of broader issues related to life, death, attitude towards the dead and society and one's approach to scripture and understanding Islamic law. What really is at play here is the tension between two competing objectives of the Shariah: the right to preservation of religion and the right to preservation of life (Opwis 2017). Those who do not allow organ transplantation do so because they believe that it violates the dictates of the Shariah vis-à-vis God's autonomy over his property, the dignity that Islam affords humans, the right to bodily integrity and the right not to be killed or be used as a means to an end. Conversely, the proponents of organ transplantation argue that the right to preservation of life is a weightier objective of the Shariah than the preservation of religion. Preservation of life is weightier because while one can express non-belief in dire necessity, there is no such substitute for life.

Thus, the proponents of position one focus more on the state of the donor and bodily integrity. More specifically for the South Asian Deobandi and Barelwi scholars discussed above, bodily intervention is not a civil transaction (*mu'āmalā*) bound by meaning and context where society can negotiate the best course of action. For them, the body is sacred and leaving it intact is a devotional imperative (*'amr ta'abbudī*)—the rules of which will remain unchanged in perpetuity (Moosa 1998, p. 306). Furthermore, the body is the site of religious, social and cultural identity and order. With respect to protecting society from social disorder, society has always exercised an element of control over the body most saliently through its purity laws (Douglas 2001). Moosa writes:

The religious concern about 'human dignity' in relation to transplants express anxieties about social integrity and the maintenance of social order. Any attempt to 'dis(em)body' the cadaver through eviscerating surgery, may indeed signify the violation of a symbolic and social 'order'. This may be the cultural subtext that underlines the understanding of the Pakistani jurists (Moosa 1998, p. 305).

In contrast to the above scholars, advocates of the second position privilege the need of the recipient over the sanctity of the donor. For them, death and the soul are an empirical phenomenon which can be tracked using technology. In contrast, supporters of position one and three view death as a natural phenomenon where nature must take its course without any intervention. The soul and everything related to it is metaphysical and cannot be monitored through machines. Finally, for Rashid (position four), death is a legal phenomenon even if the body shows some semblance of biological life.

Lying beneath the scholarly ethico-legal arguments of the scholars discussed are broader assumptions regarding how these scholars view the human body. Bryan Turner (1996) argues that there are two ways that people conceptualise their bodies: embodiment and enselvement. When

people make a distinction between themselves and their bodies by using phrases like ‘having’ or ‘possessing’ a body, they are embodying that body. For them, the body is external to themselves which they inhabit. In contrast, enselvement is when people identify themselves with their bodies. Is the body nothing more than a conglomeration of disparate interchangeable body parts or is it integrated with the idea of personhood (see Haddow 2000; Haddow 2005; Haque 2008; and Rashid 2018 for more on topic of personhood and its place in the organ donation debate)? Studies have shown that the more integrated body parts are to the idea of personhood, the more sacred they are considered and less likely to be donated. The idea is in part based on how people view their ‘body image’ which may not necessarily have any relation to biological facticity but can be influenced by history, tradition, religion and custom (Haddow 2000; Ali 2019a). While none of the scholars discussed above reject the notion of the soul, it seems that advocates of positions one, three and five view the body through the prism of enselvement. For them, donating a body part is akin to donation of the self, while scholars of the remaining positions do not confer the same amount of emotional attachment to the physical body once death has taken place (see Hamdy 2012, pp. 102–4 for al-Taṭṭāwī’s position).

We have mentioned above that the issue of organ transplantation and donation is an *ijtihādī* issue. On the basis of this, we opted for a legally pluralist approach to the issue. Hopefully, the detailed exploration of the different positions will allow people to make theologically informed decisions without feeling morally and theologically culpable for their choices. However, it must be acknowledged that people have their own understanding of bodily integrity, death and dying. Despite religion playing a big role in people’s decision making, it is not the sole arbiter. Deciding to become an organ donor is a subjective and complex process involving various factors and prioritising values (some of them elaborated in this article). Understanding Muslim viewpoints on organ donation requires a thorough understanding of these factors and their importance to Muslims, whose decisions, based on these values need to be respected.

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