

**DECEASED ORGAN DONATION LEGISLATION CASE  
STUDY OF PAKISTAN**



A thesis presented in partial fulfilment of the requirement for the degree of PhD

(Law)

Submitted by

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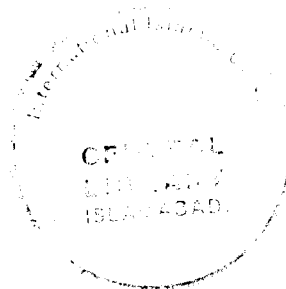
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Rizwana Gul

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## **DEDICATION**

*To Those Who Inspire It... ..*

*Donation Is a Gift of Life*

*Donation Is to Share Life*

**FACULTY OF SHARIAH & LAW**  
**INTERNATIONAL ISLAMIC UNIVERSITY, ISLAMABAD**  
**FINAL APPROVAL CERTIFICATE**


• It is certified that we have evaluated the thesis “**Deceased Organ Donation Legislation Case Study of Pakistan**” submitted by Ms. Rizwana Gul, Registration No. 82-FSL/PHDLAW/F16, in partial fulfillment of the requirements of the degree of Ph.D Law at the International Islamic University, Islamabad. The thesis fulfills the requirements in its core and quality for the award of the degree of Ph.D Law.

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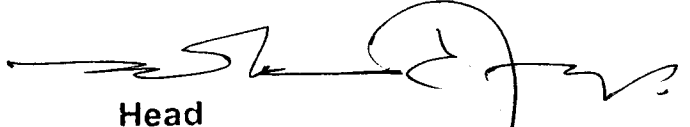
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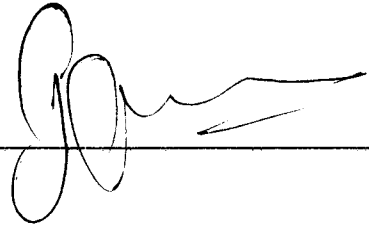


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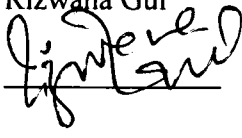
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## DECLARATION

I **Rizwana Gul**, hereby state that this thesis is innovative and has never been undertaken in any other organization. I, furthermore proclaim that any secondary information used in this dissertation has been duly acknowledged

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Although only my name appears on the title page of the dissertation, many have contributed to this. Thank you to all who made this endeavour possible.

## LIST OF CASES

*Balbir Singh vs. The Authorisation Committee etc. AIR 2004 Delhi 413).*

*Bachpan Bachao vs. Union of India & Others (2012 IAD (Delhi) 565).*

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*State vs. M Sharif etc, (988, Lahore ,2011)*

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*State vs Sharaf Ali, (2015 PCrLl 1758)*

*Suo Moto Action Regarding Illegal Transplantation of Organ, (CMA No 2018, S.M. No. 11 of  
2016)*

## ACRONYM

<b>CMS</b>	Centre for Medicare and Medicaid Services.
<b>DDCD</b>	Donation from Circulatory Death.
<b>DOI</b>	Declaration of Istanbul.
<b>DDL</b>	Deceased Donors Law
<b>FSC</b>	Federal Shariat Court.
<b>FIR</b>	First Information Report.
<b>HOTA</b>	Human Organ Transplant Authority.
<b>HBM</b>	Health Belief Model
<b>IFC</b>	Islamic Fiqh Council
<b>MESOT</b>	Middle East Organ Transplant Society.
<b>NOTA</b>	National Human Organ Transplant Authority.
<b>OD</b>	Organ Donor.
<b>OIC</b>	Organization of the Islamic Cooperation.
<b>OPTN</b>	Organ Procurement and Transplantation Network.
<b>OTC</b>	OTC Organ Tissue and Cell Trafficking.
<b>OPO</b>	Organ Procurement Organization
<b>PMP</b>	Per Million Population.
<b>SUIT</b>	Sindh Institute of Urology and Transplantation.

<b>THOA</b>	Transplantation of Human Organs Act.
<b>TPB</b>	Theory of Planned Behaviour
<b>UDHR</b>	Universal Declaration on Human Rights.
<b>UNDP</b>	United Nations Development Programme.
<b>UNOS</b>	United Organ Sharing Network.
<b>UNTOC</b>	United Nations Convention against Transnational Organizations Crime.
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization.
<b>WHO</b>	World Health Organization.
<b>WHA</b>	World Health Assembly.

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## ABSTRACT

Deceased organ donation is a critical issue in Pakistan, where public awareness is low and legislation is limited. Despite the fact that donating one's organs after death can save maximum, the demand for organs far outweighs the supply. The Islamic and moral principle of altruism and humanism, as expressed in the divine command "And whoever protects one - it is as if he has saved mankind entirely," highlights the importance of organ donation and emphasizes the need to raise public awareness about this topic. To investigate the current state of deceased organ donation in Pakistan, including the need for greater awareness, the importance of measurement, the health perspective, and the conditions under which organs can be obtained. Kidneys, heart, liver, lungs, pancreas, and intestines, corneas, skin, and bone marrow are among the vital organs that can be donated. It is hoped that by addressing these critical issues, viewing deceased organ donation as an act of altruism can help to foster a culture of generosity and kindness, as well as encourage others to consider the positive impact their decision to donate may have on the lives of others. The altruistic perspective on deceased organ donation is rooted in the principle of selflessness and the desire to help others. It recognizes that the act of organ donation can greatly benefit others and improve their quality of life, and sees this as a key motivator for individuals to choose to donate their organs. This perspective also acknowledges that organ donation can have a profound impact on society as a whole, reducing the burden of illness and disease and helping to save countless lives. In order to fully realize the potential of the altruistic perspective on deceased organ donation, it is important to create a supportive environment that encourages and facilitates organ donation. This can include educating the public about the benefits of organ donation, providing support and resources to families of donors, and ensuring that the process of organ donation is transparent and accessible to all. Overall, the ethical perspective of altruism highlights the importance of considering the well-being of others in the context of

deceased organ donation. It emphasizes the positive impact that organ donation can have on the lives of others and underscores the importance of creating a supportive environment that encourages and facilitates this selfless act. The ethical perspective of humanism, on the other hand, emphasizes the value and agency of human beings, both individually and collectively. In the context of organ donation, this perspective may focus on the idea that every individual has the right to make informed decisions about their own body and that organ donation should be a choice made freely and voluntarily. Another crucial ethical consideration in the context of deceased organ donation is consent. This viewpoint emphasises the significance of getting the person's or their next of kin's informed consent before pursuing organ donation. This makes it more likely that the decision to donate is made voluntarily and after complete understanding of the consequences. The concept of ownership in the human body is also relevant in the context of deceased organ donation. Some may argue that the body belongs to the individual and that they have the right to make decisions about what happens to it after death. Others may argue that the body is a gift from society and that individuals have a duty to use it to help others. In conclusion, a variety of philosophical perspectives, such as altruism, humanism, consent, and ownership in the human body, are reflected in the ethical perspective of deceased organ donation. In order to ensure that the donation decision is made in an ethical and responsible manner, and that the rights and wellbeing of all parties involved are respected and protected, it is crucial to take these perspectives into account.

This study will contribute to a better understanding of deceased organ donation and encourage more people to consider this life-saving act.

## Thesis Statement

No doubt, the practice of deceased human organ donation can save the lives of many, however, what if the said is confronted with many challenges! Arguably, the current legal framework of Pakistan governing the deceased organ donation and transplantation is insufficient. There is a dire need to examine, critique, and evaluate the laws and practices regulating the deceased organ donation and transplantation in the country to help improve human life.

“The legislation on deceased organ donation and implementation of legislation that incorporates altruism, the right to live and the valuing of human dignity in deceased organ donation in Pakistan has the potential to maximize organ donation, curb the illegal organ trade and counteract the negative effects of capitalism by promoting a culture of generosity and compassion towards others, protecting the rights and wellbeing of all parties involved, and ensuring the ethical and responsible allocation of organs based on principles that prioritize human dignity and the right to life.”

## Introduction

A large number of people from the Middle East, Europe, America, and Australia travel to Pakistan, China, India, Egypt, and the Philippines in search of poor donors. They take advantage of their need and offer financial compensation in exchange for one of their body organs.<sup>1</sup> The World Health Organization estimates that developed-country donor's account for up to 10% of the 63,000 kidney transplants performed each year around the world.<sup>2</sup> The situation is alarmingly exceptional in a third-world country like Pakistan. According to WHO estimates, Pakistan has up to fifteen hundred 1500 transplantation

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<sup>1</sup> Humayun A “*To Sell or Not To Sell an Organ.*” *Dawn, August 30, 2007,*” *Dawn, August 30, 2007.*

<sup>2</sup> *Ibid.*

voyagers on a regular basis, second only to China.<sup>3</sup> Pakistan is facing problem in legitimising and moralising the procurement of deceased organs so that patients in need of transplants can receive them without exploiting vulnerable populations.<sup>4</sup>

In the past, Pakistan's efforts to combat the problem of illegal organ trafficking and the black market trade in human organs have been hampered by a lack of laws and regulations. However, in recent years, the nation has taken action to address this problem and has put in place new laws and policies intended to combat illegal organ trafficking and control the procedure for legal organ transplantation. In order to oversee the donation and transplantation of organs and to stop illegal activities like the trafficking of human organs, the Pakistani government has also established a National Organ Transplantation Coordination Centre. But it's still a complicated problem, and more needs to be done to solve it. By the end of July 2007, the Pakistan Supreme Court, the country's highest legal authority, had issued a decision ordering the Pakistani government to enact legislation prohibiting the country's illegal organ trade.<sup>5</sup> This decision was made in response to complaints that impoverished people were being forced to sell their kidneys for a pittance. The "Transplantation of Human Organs and Tissues Act 2010" was upheld by the government of Pakistan scheduled at the National Assembly.<sup>6</sup> This law requires that each donation be evaluated by a group of therapeutic experts who determine that the donation is completely voluntary.<sup>7</sup> Those found liable or associated with the business, trade, or exchanging of organs face a sentence of (ten) ten years in prison under the Act.<sup>8</sup>

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<sup>3</sup> Jonathan Watts, "China Introduces New Rules to Deter Human Organ Trade," *The Lancet* 369, No. 9577 (June 2007): 1917–18, (accessed: 30th November, 2019).

<sup>4</sup> Ibid.

<sup>5</sup> Syed Ali Anwar Naqvi, "A Socioeconomic Survey of Kidney Vendors in Pakistan," *Transplant International* 20, No. 11 (November 2007): 934–39

<sup>6</sup> "The Transplantation of Human Organs and Tissues: An Ordinance. Ordinance Gazette of Pakistan, Government of Pakistan," 2007 (XLIII of 2007), 2007.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

We are still at a fork in the road when it comes to the application and enforcement of the law. The procedural postponement has raised legitimate concerns among experts in the field of organ donation as well as regarding the ethical principles in the country's general public. In any case, this ongoing improvement has not, at least for the time being, put an end to the illegal organ trade. The reality is that this legislation has not put an end to, or at least theoretically reduces, the black market in Pakistan.<sup>9</sup>

In Pakistan, deceased organ donation is not a common practise. As a result, there exists lacuna in both this area of study and practise. Individuals are either unaware or oblivious to the fact that they can continue to serve humanity after death. The human body begins to decompose shortly after death; different body organs decompose at different rates. The human body decomposes within just six days.<sup>10</sup> So, instead of allowing the process of decomposition, the body can save another person's life. People die all over the world as a result of organ failure.

Deceased organ donation for the purpose of serving humanity is a common practise in the West. Pakistan, despite being Islamic welfare state,<sup>11</sup> unfortunately does not have such practise and law. In the past, Pakistan's efforts to combat the problem of illegal organ trafficking and the black market trade in human organs have been hampered by a lack of laws and regulations. However, in recent years, the nation has taken action to address this problem and has put in place new laws and policies intended to combat illegal organ trafficking and control the procedure for legal organ transplantation. In order to oversee the donation and transplantation of organs and to stop illegal activities like the trafficking of human organs, the Pakistani government has also established a National Organ Transplantation Coordination Centre. It's still a complicated problem, and more needs to be done to solve it. Although a

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<sup>9</sup> Ali Mahir, "Promises but No Action". 'Dawn. August 29, 2007.

<sup>10</sup> M. Lee Goff, 'Early Post-Mortem Changes and Stages of Decomposition in Exposed Cadavers,' *Experimental and Applied Acarology* 49, No. 1-2 (June 25, 2009): 21-36, (Accessed on 20th June, 2019).

<sup>11</sup> Sher Muhammad. "The Islamic Welfare State Concept and Practices, *Al Qalam*, December 2019, Vol24, Issue: 2.

precise figure on the causes of death in Pakistan due to non-availability of organs isn't available, a conservative estimate suggests that over 50,000 people die each year from organ failure, including 15,000 people with renal failure, 10,000 people with cirrhosis<sup>12</sup>, and 6,000 people with cardiac arrest.<sup>13</sup>

Research on deceased organ donation is important in a nation like Pakistan where there is a lack of awareness about this practise.<sup>14</sup> Given the advantages of improved access to cadaveric body<sup>15</sup> organ transplantation, the drawbacks of the existing required demand approach to handling a donation, as well as the issues of a lack of necessary cadaveric body organs for transplantation. Pakistan has been a major hub for illegal organ trade, particularly for organ transplant tourism. The illegal organ trade is driven by a demand for organs, often from patients who are unable to find a suitable donor in their home countries, and are willing to pay large sums of money for a transplant abroad. Controlling the illegal organ trade will require a combination of measures, including stricter laws and enforcement, better regulation of the legal transplantation process, and increased public awareness and providing information on the risks of illegal organ trafficking. In a country with more than 200 million people, there have only been seven deceased organ donors, with Abdul Sattar Edhi being the most well-known.<sup>16</sup> Whereas, with a population as that of one-tenth that of Pakistan, there are so many dead cornea donors in Sri Lanka that the country's Eye Donation Society exports

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<sup>12</sup> Cirrhosis is a condition in which liver is permanently damaged. "Scaglione S, Kliethermes S, Cao G, et Al. The Epidemiology of Cirrhosis in the United States: A Population-Based Study. *Journal of Clinical Gastroenterology*. 2015;49 (8):690–696.

<sup>13</sup> Syed Adibul Hasan Rizvi and Syed Ali Anwar Naqvi, 'Commercial Transplants in Local Pakistanis from Vended Kidneys: A Socio-Economic and Outcome Study,' *Transplant International* 22, No. 6 (June 2009): 615–21, (Accessed on 20th June, 2019).

<sup>14</sup> Ibid.

<sup>15</sup> A cadaveric body is a dead human body that is used by medical students, physicians and other scientists to study anatomy, identify disease sites, determine causes of death, and provide tissue to repair a defect in a living human being

<sup>16</sup> James Cerilli, "Ethical Guidelines for Organ Procurement," *Transplantation* 46, no. 1 (July 1988): 171–72,

residual corneas to other countries. In 2014, the Eye Donation Society exported 850 corneas to Pakistan.<sup>17</sup>

### **Significance and Objectives of Research**

In many countries, including Pakistan, there is lack of awareness about the concept of deceased organ donation, some people may be unfamiliar with the process or may have misconceptions about it. Additionally, in Pakistan, there are also religious and cultural concerns that can be a barrier to organ donation. For example, some people may have religious beliefs that the body should remain intact after death, or they may believe that the donation of organs is forbidden. These concerns can make it difficult to increase the number of people who are willing to donate their organs after death. Nonetheless, a number of religious scholars, including those from Pakistan, have issued fatwas based on the methodology used in a number of Muslim countries, including Saudi Arabia, Egypt, Jordan, and others.<sup>18</sup>

I am looking to this novelty for expanding the number of organ donors in the long run. The dissertation suggests a novel strategy for expanding the number of organ donors in the long run. It acts as a framework for a long-term source of post-mortem organ donation. The model promotes deceased organ donation by ensuring the core principle of altruism in the act of donation, as well as the protection and appreciation of donors and healthcare professionals.

Most crucially, the approach focuses on gaining and sustaining public trust by safeguarding one's individuality and human dignity, resulting in a long-term donor base. It will be critical in proposing separate deceased organ legislation and, on the other hand, raising awareness will motivate people to donate after death, which will ultimately lead to

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<sup>17</sup> Ibid

<sup>18</sup> Shaheen, Faissal A. M. 'Organ Donation in the Middle East Countries.' *Ethnicity & Disease* 19, No. (Spring 2009): S-16--17.

lower crime rates, i.e. organ trafficking, kidnapping, forced organ removal, fraud and exploitation. Besides this, the legal framework's design would meet moral, religious, and legal requirements.

## **Research Questions**

The following research questions will be addressed in various chapters of this PhD research in an effort to meet the stated goals and objectives:

- Q1.** What is the historical and theoretical foundation of organ transplantation and how has it evolved over time?
- Q.2** What is the purpose and scope of The Organ and Tissues Transplant Act 2010 and 2018 bill in Pakistan and how they regulate the process of organ and tissues transplantation in the country?
- Q.3** What are the ethical considerations involved in deceased organ donation and how do they impact the process of organ procurement and transplantation from a moral and religious perspective?
- Q.4** What is the current state of deceased organ donation in Pakistan and how has it evolved over time, including an examination of specific case studies to illustrate the challenges and successes in the deceased organ donation process?
- Q.5** How does Islamic teaching on organ donation balance with the medical necessity of organ transplantation, and what ethical considerations must be taken into account in the Muslim community for deceased organ donation?
- Q.6** What impact would proposed legislation on deceased organ donation have on increasing donation rates, and how can such legislation effectively balance individual rights and the needs of the larger community to receive the gift of life through transplantation?

## **Research Methodology**

This thesis is going to deploy non-doctrinal research methodology, particularly – altruistic or utilitarian critique – critiquing the laws and practices of Pakistan governing the deceased organ donation and transplantation in the country.

This will be a case study of the Pakistani laws and practices in greater depth to comprehend the entire legal framework and its successful operation/implementation in the country after pinpointing research findings and some useful recommendations.

This PhD study is designed to achieve the aforementioned goals and objectives. Following steps could be included in the research methodology for case study on deceased organ donation legislation using qualitative research methodology:

- a. **Literature Review:** Conduct a comprehensive review of the literature on deceased organ donation legislation, including international best practice and earlier research on deceased organ donation and to find out academic niche on the topic. This will give the model and study a theoretical framework and assist in identifying the major problems and obstacles surrounding organ donation. Literature on the historical developments and difficulties associated with deceased organ donation legislation in Pakistan will be researched, together with the documented contributions made by various stakeholders. The Islamic rulings on the most important religiously and ethically continuous issues surrounding organ donation will also be studied in the context of this legislation, along with the various literature on conventions and treaties particularly the established normative criteria for deceased organ transplantation.
- b. **Data Analysis:** Analyses the collected data using qualitative data analysis techniques, such as thematic analysis, since this is a case study research method. This will help to

identify key themes and patterns in attitudes and perceptions towards organ donation, and highlight areas where improvements in legislation and practice are needed.

- c. **Case Study:** Conduct a detailed case study of the impact of deceased organ donation legislation in the study area, including an examination of the legal and regulatory framework for deceased organ donation, the role of medical professionals and government agencies, and the attitudes and behaviours' of members of the public. This will provide a deeper understanding of the challenges and opportunities for improving deceased organ donation.
- d. **Recommendations:** Based on the findings of the study, develop recommendations for improving the legal and regulatory framework for deceased organ donation, including steps to increase public awareness and education, improve access to information, and ensure ethical and responsible organ donation practices.

## **Literature Review**

There are relatively few comprehensive, specific, and effective organ and tissue transplant organisations in Pakistan when it comes to deceased organs. This vulnerability has yet to be addressed. However, international society has dragged this issue down. There are publications and studies on deceased organ and tissue transplant surgeries all over the world, and there is a lot of trainings going on in the West with deceased organ donation. These metrics will be evaluated in order not to just initiate dialogue and lobbying but also advocating the deceased organ legislation.

In the book *Death, Dying, and Organ Transplantation*,<sup>19</sup> Franklin G, Miller Robert, and Through reconstructs medical ethics as it relates to the end of life and challenges major lessons learned in the establishment of therapeutic morals. They argue that the traditional procedure for ending life promotes advance technology, resulting in the death of patients and organ

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<sup>19</sup> Franklin G, Miller Robert, and Through, *Death, Dying and Organ Transplantation: Reconstructing Medical Ethics at the End of Life.* , 2005. (New York: LFB Scholarly Publishing)

donors, i.e. hearts, lungs, livers, and kidneys, who are not dead by any stretch of the imagination at the time their organs are removed for transplantation. These techniques are morally correct, but they conflict with established clinical morality principles that practitioners should not purposefully cause the death of their sick patients and that vital organs can only be obtained from deceased organ donors for transplantation. In this work, the author adopts a moral analysis, which involves an honest confronting of the truth of restorative practises towards the end of life. Moral analysis involves the application of ethical principles and values to evaluate the rightness or wrongness of a particular action, decision or situation. It requires an honest and objective examination of the facts and evidence, as well as an understanding of the ethical frameworks and perspectives relevant to the issue at hand. In the context of restorative practices towards the end of life, a moral analysis would likely involve considerations of autonomy, beneficence, non-maleficence, and justice. For example, it may raise questions about the respect for a patient's wishes, the potential benefits and harms of interventions, and the fair distribution of healthcare resources. Therefore, the adoption of a moral analysis in this work can provide a valuable framework for assessing the ethical implications of restorative practices towards the end of life. It can help to ensure that decisions and actions are guided by principles of ethical conduct and that the well-being and dignity of patients are upheld.

They uncover the misinterpretation as halting life bolster simply enables the patients to kick the bucket from their therapeutic condition, and they debate the precision of deciding to pass of hospitalized sick men grounded on an analysis of "cerebrum demise" before essential organ gift. After enumerating the true and theoretical blunders encompassing current practices of deciding passing with the end goal of organ gift, the creators build up a novel moral record of obtaining crucial organs. With regards to sensible plans to pull back life bolster, 'Before their death, living sick men are not affected or compromised by organ

donation, reasonable and lawful assent to cease treatment and organ donation has been acquired. The author appears to have drawn inspiration from Plato's utopian model throughout his book, and he proposes for the excision of vital organs rather than keeping the patient artificially alive on a ventilator, I have tried to cover the arguments against doing so in the thesis. One of the major lessons learned in the establishment of therapeutic morals is the importance of informed consent. This means ensuring that individuals are fully informed about the potential risks and benefits of organ donation and that they have voluntarily agreed to donate their organs. Another important lesson is the need to prioritize the well-being of the potential organ donor, regardless of their ability to donate. This includes ensuring that they receive appropriate care and support throughout the end-of-life process, and that their dignity and autonomy are respected. However, it is important to ensure that the process of obtaining organs from deceased individuals is done in a way that respects their autonomy, dignity, and rights. Despite the fact that organ transplantation can save the lives of those in need, it is crucial to approach this matter carefully and sensitively to uphold the rights and dignity of everyone involved.

Henderson Scott emanates in his book *Death and Donation: Rethinking Brain Death as a Means of Procuring Transplantable Organs*,<sup>20</sup> Only a few commonly resolved bioethics difficulties were determined by the cerebrum when human death law in 1968 passed. However, in the last fifteen years or more, a growing number of experts in pharmaceuticals, philosophy, and religion have come to regard cerebrum death as an unarguable and absurd paradigm for death assurance. Given that civil debate over the death of the brain has involved moderate meetings of experts, few communities understand that brain deaths fail to compare with any rational natural or philosophical origin of death. When the cerebrum is not dead, the ejection of vital transplanting organs is the immediate reason for passing the law, resulting in

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<sup>20</sup> Henderson Scott. *Death and Donation: Rethinking Brain Death as a Means of Procuring Transplantable Organs*. (New York: M.C. Graw-Hil, 2010).

a desecration of the DDL (Deceased Donors Law). This remarkable work combines the medical, sociological, legal, philosophical, and spiritual flaws inherent in the current societal plan, while also considering organ donation. In this manner, the very bioethical examination offers an exasperating examination of moral scrapes intrinsic in the way organs that are transplanted are secured. This book together promotes these collaborative strings. This book ends by setting the groundwork for a new perspective on death with the ultimate goal of assisting organ donation and transplantation. It advocates abandoning a mind-passing rule in the light of its favourable disappointments. Scott's raises important questions about the definition of death and the use of brain death as a criterion for determining death in the context of organ procurement. The traditional idea of brain death is criticised in the book, which contends that it might not accurately reflect the nature of death. It contends that the use of brain death determination as a method of obtaining transplantable organs has given rise to a number of moral and ethical issues, including the potential exploitation of vulnerable populations and the use of people who are not actually dead as organ donors. Scott argues that the definition of brain death as a means of procuring transplantable organs was not fully considered when the human death law was passed in 1968. This suggests that the decision to use brain death as a criterion for organ donation was not fully thought through and may have been influenced by other factors, such as the need for transplantable organs. According to him growing number of experts in pharmaceuticals, philosophy, and religion now view brain death as an unreliable and flawed concept for determining death. This indicates that there is a diversity of opinion on the issue, and that the traditional view of brain death as a reliable criterion for determining death may be challenged. Furthermore, Scott suggests that brain death does not compare with any rational natural or philosophical origin of death, indicating that there may be ethical and philosophical issues at play that need to be considered when using brain death as a criterion for organ donation. Finally, Scott asserts that the immediate

reason for passing the human death law was the need for transplantable organs, rather than a genuine concern for the well-being of patients or ethical considerations around organ donation. This raises questions about the ethical implications of using brain death as a criterion for organ donation, and whether it is appropriate to sacrifice the well-being and dignity of patients for the sake of organ donation. Scott's argument highlights the need for a critical and nuanced analysis of the concept of brain death and its relationship to organ donation. It suggests that there may be ethical and philosophical issues at play that need to be carefully considered and evaluated before making decisions about organ donation and the criteria used to determine death. This book emphasises the need for a more sophisticated and nuanced method of determining decease and obtaining organs for transplant. It implies that we should evaluate our current methods for determining death critically and think about new ones that more accurately reflect how complicated and multifaceted death is. In conclusion, Henderson Scott's book makes a significant contribution to the ongoing discussion surrounding the ethics of organ donation and the definition of death. It pushes readers to question the accepted definitions of death and consider more nuanced strategies that more accurately capture the complexity of the dying process. I have attempted to draw conclusions about other notions in the context of biomedical ethics and cerebral death in accordance with the perspective of Islam.

Margaret Lock explores in her book *Twice Dead: Organ Transplantation and the Reinvention of Death*,<sup>21</sup> Organ transplant stories can be found in folklore and folk tales, as well as records from prehistoric times show practise of organ donation, but it has only been in the last twenty years that therapeutic knowledge and innovation have become sufficiently cutting-edge for specialists to perform a large number of transplants each year. In the vast majority of situations, those who have been identified as deceased are the source of organs

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<sup>21</sup> Margaret Lock, *Twice Dead: Organ Transplants and the Reinvention of Death by Matching Organs with Donors: Legality and Kinship in Organ Transplants*. (New York: Humana Press, 2010).

that cannot be transplanted. The author compares this situation to that in Japan, where, despite the availability of basic innovation and talent, mind passing was only legitimately recognised in 1997, and then only under constrained and difficult circumstances. This book analyses the social, radical, and medical explanations for the United States' prepared acceptance of a new law of death, as well as Japan's dismissal of it up to this point, with the result that organ donation in the country has been severely constrained. This incisive and practical discussion demonstrates that death isn't evident, that the space between life and death is socially constructed, liquid, unique, and debateable. Lock in her book *Twice Dead: Organ Transplantation and the Reinvention of Death*, draws on broad meetings held over a decade with doctors working in serious care units, displace specialists, organ beneficiaries, benefactor relations, individuals from the general population in the United States and Japan; and radical Japanese adherents restricted to an acknowledgment of cerebrum passing. This book confronts a standout amongst the most perplexing inquiries of our day by illustrating that death can never be viewed as a natural occurrence and that social, therapeutic, legal, and political dimensions are unavoidably entangled in the development of cerebrum passing. The history and cultural significance of organ transplantation are examined in depth in Margaret Lock's book "Twice Dead: Organ Transplantation and the Reinvention of Death." The author examines the cultural and social meanings of organ transplantation and its effects on how we conceptualise death using an interdisciplinary approach that combines medical history, anthropology, and sociology. The notion that organ transplantation has resulted in a "reinvention of death" is one of the major themes covered in the book. The author claims that the advancement of contemporary transplantation methods has fundamentally altered our conception of what it means to be dead. She contends that medical advancements and social values have changed the idea of death from a biological to a social and cultural construct. In order to demonstrate how the concept of transplantation has been ingrained in people's

imagination for centuries, the author also examines the rich cultural and historical heritage of organ transplantation. He does this by using examples from folklore and folk tales. This demonstrates how deeply ingrained organ transplantation is in our collective understanding of what it means to be alive and dead, as well as its profound cultural and emotional resonance.

The exploration of the cultural and social meanings of organ transplantation in Margaret Lock's book "Twice Dead: Organ Transplantation and the Reinvention of Death" is provocative and insightful, to sum up. It challenges readers to reconsider their conceptions of death and the ways in which social norms and medical advancements affect how we view the experience of dying. A critical examination of the cultural and social implications of organ transplantation, has influenced our understanding and conceptualization of death. The book is unique in its interdisciplinary approach, combining medical history, anthropology, and sociology to provide a comprehensive analysis of the topic. One of the main themes of the book is the idea that organ transplantation has resulted in a "reinvention of death." Lock argues that the medicalization of death through organ transplantation has led to a shift in the way we understand and conceptualize death. Rather than being seen as a natural and inevitable process, death has become increasingly defined by medical criteria and technological interventions. Lock suggests that this "reinvention of death" has significant social and cultural implications. It has transformed our understanding of what it means to be human, as well as our attitudes towards the body and its organs. For example, the use of brain death as a criterion for organ donation has raised questions about the meaning and value of consciousness, and whether it is appropriate to use organs from individuals who may still be considered "alive" by some standards. Furthermore, Lock argues that the commodification of organs through transplantation has created new ethical dilemmas and challenges, such as the exploitation of vulnerable populations and the potential for financial gain. This highlights the need for a more nuanced and critical approach to organ donation and transplantation, one that

takes into account the social, cultural, and ethical implications of the practice. Overall, Lock's book offers a critical and thought-provoking analysis of the cultural and social meanings of organ transplantation and its impact on our understanding of death. It highlights the need for a more holistic and interdisciplinary approach to the practice of organ donation and transplantation, one that takes into account the complex social, cultural, and ethical issues involved.

Marie Jacob elucidates in her book, *Matching Organs with Donors: Legitimacy and Affinity in Organ Transplantations*.<sup>22</sup> While human organ activity is fraught with shock and judgement, gifts of such practice are regarded as highly moral. In general, the distinction between illegal trafficking and noble gift is rarely drawn as sharply. Those concerned in the legal, social, and business evaluations of transplanting organs must consider thought, administration, and medical care methods. Lawfulness and kinship in transplants coordinating organs with donors inspect legislation and practises in the field of organ transplantation and allow patients to take inventive legal detours while undertaking legal procedures. Marie-Andree Jacob delves into the techniques and mind-sets of specialists, executives, dark-area labourers, patients, benefactors, and merchants in Israel's living kidney transplantation agencies in this nuanced ethnography. *Coordinating Organs with Donors* depicts how reasonable matches are identified from meanings of connection using terminology collected from givers and beneficiaries. Jacob provides an unobtrusive depiction of the tumultuous relationships that exist between organ donors/dealers, patients, their merchants, and the authorities at healing facilities who routinely acknowledge tentatively acquired organs. A thorough analysis of the intricate moral, legal, and social issues relating to organ transplantation is provided in Marie Jacob's book "Matching Organs with Donors: Legitimacy and Affinity in Organ Transplantations." The book discusses the difficulties that

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<sup>22</sup> Marie Jacob, *Matching Organs with Donors: Legitimacy and Kinship in Organ Transplants*. (New York: C.R.C Press LLC. 2000).

doctors, transplant recipients, and donors, as well as the general public, face when deciding who should receive organs and under what circumstances. The idea of legitimacy in organ transplantation is one of the book's major themes. Jacob argued that a number of elements contribute to the legitimacy of organ transplantation, including the need for the transplant from a medical standpoint, the donor's willingness to donate, and the compatibility of the donor and recipient. She also discusses the idea of "affinity" in relation to organ transplants, which is the term used to describe the emotional or personal ties between the donor and recipient. Jacob also addresses the challenges posed by the shortage of available organs for transplantation. She argues that a more equitable distribution of organs would be possible if the allocation system were based on medical need rather than factors such as wealth or social status. In addition, she proposes that increasing public education and awareness about organ donation could help to address the shortage of available organs. Another important theme in the book is the ethical considerations involved in organ transplantation. Jacob explores the complex issues surrounding informed consent, autonomy, and beneficence. She also examines the moral and ethical implications of using organs from living donors, as well as the ethical issues surrounding the use of organs from deceased donors, including issues of autonomy and the right to self-determination. Marie Jacob's book, "Matching Organs with Donors: Legitimacy and Affinity in Organ Transplantations," presents a critical analysis of the complex ethical, social, and legal issues involved in organ transplantation. The book examines the legitimacy and affinity of organ transplantation, and the challenges associated with coordinating organs with donors. One of the main arguments of the book is that while organ transplantation is viewed as a highly moral act, the distinction between illegal trafficking and noble gift is often blurred. Jacob highlights the need for greater awareness and attention to the ethical implications of organ transplantation, and the need for clear legal frameworks to regulate the practice. Furthermore, Jacob argues that the coordination of

organs with donors requires careful consideration of legal, social, and medical factors. The book explores the legal and administrative challenges involved in organ transplantation, as well as the ethical dilemmas associated with the selection of donors and recipients. Jacob suggests that patients may need to take creative legal detours in order to navigate the complex legal procedures involved in organ transplantation. The book also emphasizes the importance of kinship and affinity in organ transplantation. Jacob argues that the concept of affinity is crucial in understanding the complex social and emotional factors involved in organ transplantation. She suggests that kinship and family relationships play a key role in the decision-making process around organ donation, and that the legal framework for organ transplantation should take into account these complex social and emotional dynamics. Overall, Jacob's book offers a critical and nuanced analysis of the complex ethical, social, and legal issues involved in organ transplantation. It highlights the need for greater awareness and attention to the ethical implications of the practice, and for clear legal frameworks to regulate and guide the process of organ transplantation. The book emphasizes the importance of kinship and affinity in organ transplantation, and the need to consider the complex social and emotional factors involved in the selection of donors and recipients.

Gurch Randhawa expounds in his book, *Organ Donation and Transplantation – Public Policy and Clinical Perspectives*.<sup>23</sup> When it comes to prolonging the lives of those who are fortunate enough to have a bodily organ donation, transplantation has triumphed. However, this life-saving breakthrough has a darker side as well – scarcity of organs to fulfil the ever-increasing demand. Not only does this instil a rising amount of anxiety and cognitive weight in the patients and families concerned, but it also places a significant financial burden on health-care providers. *Organ Donation and Transplantation – Public Policy and Clinical*

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<sup>23</sup> Gurch Randhawa, *Organ Donation and Transplantation – Public Policy and Clinical Perspectives* (Rockland: Syngress Publishing, Inc., 2007).

Perspectives,<sup>24</sup> examines and reviews open arrangement breakthroughs and clinical advancements that will ideally ensure increased organ accessibility and greater united survival. Medicinal, approach, and scholarly specialists from around the globe have contributed parts to the book. It provides a comprehensive overview of the many issues involved in the field of organ donation and transplantation. The book covers a wide range of topics, including the history and development of organ transplantation, the medical and ethical considerations involved in the process, and the public policies that govern the allocation of organs. One of the key themes of the book is the importance of public policy in shaping the organ transplantation process. Randhawa argues that public policies play a crucial role in determining who receives organs, how organs are allocated, and what criteria are used to assess the medical necessity of a transplant. He also examines the impact of public policies on organ donation and transplantation, including issues such as the regulation of organ procurement organizations, the protection of donor and recipient rights, and the ethical considerations involved in the allocation of organs. Another important theme in the book is the role of clinical perspectives in organ transplantation. Randhawa provides a detailed examination of the medical and clinical aspects of organ transplantation, including issues such as the medical assessment of donors and recipients, the surgical techniques used in transplantation, and the management of post-transplantation complications. He also provides an in-depth analysis of the clinical outcomes of transplantation, including survival rates, quality of life, and the long-term health implications for transplant recipients. In addition to these themes, the book also includes a discussion of the social and cultural factors that impact organ transplantation. Randhawa explores the role of cultural beliefs and attitudes in shaping public perceptions of organ donation and transplantation, and the ways in which these attitudes and beliefs can impact the allocation of organs. He also examines the impact

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<sup>24</sup> Ibid.

of socioeconomic factors, such as income, education, and ethnicity, on access to transplantation. It also provides a critical analysis of the issues surrounding organ donation and transplantation. One of the key themes in the book is the tension between the life-saving potential of transplantation and the scarcity of organs to meet the growing demand. Randhawa argues that while transplantation has been successful in prolonging the lives of those who receive organ donations, the scarcity of organs has led to significant ethical and policy challenges. The book examines the social and cultural factors that influence attitudes towards organ donation, as well as the legal and regulatory frameworks that govern the practice. Moreover, the book highlights the importance of public policy in shaping the practice of organ donation and transplantation. Randhawa argues that policy decisions can have a significant impact on the availability of organs and the success of transplantation programs. The book explores the role of governments, healthcare systems, and other stakeholders in shaping public policy around organ donation and transplantation. Randhawa also emphasizes the importance of clinical perspectives in understanding the challenges of organ donation and transplantation. The book examines the medical and scientific aspects of the practice, including the complexities of organ matching and the risks and benefits of different transplantation techniques. It is a comprehensive and critical analysis of the issues surrounding organ donation and transplantation. It highlights the tension between the life-saving potential of transplantation and the scarcity of organs, and explores the social, cultural, legal, and medical factors that shape the practice. The book emphasizes the importance of public policy in addressing the challenges of organ donation and transplantation, and the need for collaboration and cooperation among stakeholders to ensure the success of transplantation programs. In brief, Gurch Randhawa's book provides a comprehensive and nuanced examination of the many challenges and opportunities involved in the field of organ donation and transplantation. His analysis is based on a careful examination of the relevant literature

and his own extensive experience as a researcher and practitioner in this field. The book is an invaluable resource for anyone interested in the public policy, clinical, and social aspects of organ transplantation and is an important contribution to the ongoing discourse about this complex and challenging topic.

Farhat Mozam develop in her book "*Sharia Law and Organ transplantation: Through the lens of Muslim Jurists*"<sup>25</sup> Non-Muslim scholars frequently make the error of portraying Islam as a homogeneous and static shariah jurisprudence (Muslim Jurisprudence). The truth is that Muslims live in a number of ways, and Muslim scholars hold a variety of positions on legal and ethical issues. Jurisprudence. The author in this book, *Sharia Law and Organ transplantation: Through the lens of Muslim Jurists* begins with a brief overview of the evolution of Shari'ah, as well as the modern *usul al-fiqh* (jurisprudence's foundation) and *ikhtilaf* tradition (disagreements) that is a case in Muslim jurisprudence. It addresses the latter in terms of legal perspectives on organ donation and brain death, which range from agreement to disagreement based on a specific interpretation. The second half of the book is a "case study" of Pakistan, beginning with a synopsis of the events surrounding the National Organ and Tissue Transplantation Ordinance (2007), which was enacted to regulate the country's kidney trade. It discusses an appeal filed in the Federal Shariat Court of Pakistan (FSC) contending that the explicit provisions of the Order were inconsistent with Sharia law, as well as the arguments made by lawyers and public prosecutors representing the suitors, as well as arguments made by doctors, and the FSC's final judgement dismissing the appeal.<sup>26</sup> This situation reveals how spiritual and controlling positions are influenced by the exchange of professed power boundaries within party-political and lawful coordination, as well as current societal standards.

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<sup>25</sup> Farhat. Mozam, *Sharia Law and Organ Transplantation: Through the Lens of Muslim Jurists*. (Malaysia: Bruno Inc., 2008).

<sup>26</sup> Shariat Petition number 1/I 2008.

By examining Islamic law's perspective on organ transplantation through the eyes of Muslim jurists, Farhat Mozam's book "Sharia Law and Organ Transplantation: Through the Lens of Muslim Jurists" makes a significant contribution to our knowledge of this topic. The book offers a thorough analysis of various Muslim jurists' perspectives on the subject and offers a nuanced understanding of the ways in which Islamic law approaches this complex issue. One of the key themes of the book is the importance of considering the diversity of views within Islamic law with regards to organ transplantation. Mozam highlights that there is a rich tradition of Islamic jurisprudence that offers a wide range of opinions on the topic, and that non-Muslim scholars frequently make the error of portraying Islam as a homogeneous and static shariah jurisprudence. By presenting the views of different Muslim jurists, Mozam provides a more nuanced understanding of the ways in which Islamic law approaches the practice of organ transplantation. My thesis will highlight the role of altruism and humanism in Islamic law by taking in the account of Mozam work. I will engage dialogue that Islamic law places a strong emphasis on the importance of helping others, and that this principle is reflected in the way that Muslim jurists approach the issue of organ transplantation. I will also highlight the humanistic aspect of Islamic law, which emphasizes the value of preserving human life and promoting well-being. In addition to these themes, this study will also provide a detailed examination of the practical and ethical considerations involved in organ transplantation from an Islamic perspective. The issue of informed consent, the role of family members in making decisions about organ transplantation, and the ethical implications of using organs from deceased donors. This study will also give an analysis of the various legal and regulatory frameworks that govern organ transplantation in Muslim-majority countries. In conclusion, Farhat Mozam's book provides a valuable contribution to the understanding of the ways in which Islamic law views the practice of organ transplantation. By presenting a nuanced understanding of the diverse views within Islamic

jurisprudence and this thesis will be highlighting the importance of altruism and humanism in Islamic law, the book offers a unique perspective on this complex and challenging topic. The book is an important resource for anyone interested in the intersection of Islamic law and the practice of organ transplantation, and is a testament to the author's deep understanding of the subject. It is an insightful contribution to the study of Islamic law and its perspective on organ transplantation. Mozam's emphasis on the diversity of views within Islamic jurisprudence is a significant contribution to the field and underscores the importance of a nuanced understanding of Islamic law. One of the key strengths of the book is its detailed examination of the practical and ethical considerations involved in organ transplantation from an Islamic perspective. Mozam's discussion of the issue of informed consent, the role of family members in decision-making, and the ethical implications of using organs from deceased donors is particularly valuable. Additionally, the analysis of the legal and regulatory frameworks that govern organ transplantation in Muslim-majority countries is an important contribution to the field. Overall, Mozam's book provides a thorough analysis of the ways in which Islamic law approaches organ transplantation, and its practical and ethical implications. The book offers a nuanced understanding of the diversity of views within Islamic jurisprudence and the importance of considering this diversity when studying Islamic law. It is an essential resource for scholars and researchers interested in the intersection of Islamic law and organ transplantation.

Whereas this thesis aims to highlights the importance of role of altruism and humanism in Islamic law. This aspect of Islamic law reflects the value of helping others and promoting well-being, which is also reflected in the way that Muslim jurists approach the issue of organ transplantation. The humanistic aspect of Islamic law that emphasizes the preservation of human life is one of the objective and significance of this thesis.

Noor Safina, “*Organ Transplantation: Islamic Bioethics*”<sup>27</sup> offers a thorough examination of the moral and legal problems associated with organ transplantation from an Islamic viewpoint. The author, Noor Safina, is a scholar and specialist in Islamic bioethics, and her knowledge of the subject offers a distinctive viewpoint. Organ transplantation is a significant advancement in current medicine, saving lives and improving the quality of life for many patients. However, because the demand for organ transplants far outnumbers the supply of organs, the transplantation system is frequently beset by complex religious and ethical issues. The issues that may emerge in the context of organ transplantation, as well as the current legal framework for Islamic organ transplantation. Medieval lawyers thought that mutilating one living being for the profit of another infringes the dignity of the human being. Some scholars express religious assistance as to their permissibility among modern Muslim academics and scientists, while the other group consider this illegal. The latter contends that organ/tissue transplantation is a medical technique that infringes on the donors’ or recipients’ fundamental rights, and that mutilation, harm, or infringement of the deceased body is forbidden, whether the deceased is believer or non-believer. Organ transplantation is a new topic that ancient jurists could not have dealt with or addressed in their Shariah judgements in its current state due to the latest scientific advances in the medical discipline. As a result, specific judgements on the subject are hard to come across in traditional literature. As such, this research aims to evaluate the problem in debate grounded on Shariah’s general or wide rules. In every age, the legal situation on any pressing issue must take into account Shariah’s broad and comprehensive standards, categorical imperatives, and adequate methodology for exercising Ijtihad. With this approach new rulings can be obtained on novel issues, i.e. the severe problem under consideration at the moment. Any blunder in addressing such perplexing and complicated issues can impede any Muslim country from progressing. Legal

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<sup>27</sup> Noor Safina, “Organ Transplantation: Islamic Bioethics,” *Federation of Islamic Medical Association FIMA*, 2002.

doctrines and primary sources are studied, especially those dealing with any act involving living and deceased organs. This article, "Organ Transplantation: Islamic Bioethics"<sup>28</sup> examines this legal heritage by outlining the new considerations that must be considered; the variables that force us to re-evaluate the topic within the context of Sharia laws.

One of the strengths of this thesis is its focus on the Islamic ethical and legal framework for deceased organ transplantation. It provides a detailed analysis of the Islamic principles and laws related to organ transplantation, including the principles of respect for life, the sanctity of the human body, and the importance of informed consent. The Islamic position on the use of neurological death as a criterion for determining death, and the ethical and legal issues surrounding the use of organs from living donors. One of the emphasis of this thesis is on the practical aspects of organ transplantation from an Islamic perspective which is significant contribution. It offers guidance and recommendations for healthcare professionals and policymakers, including details on how to raise awareness among the general public about the value of organ donation, how to address the organ shortage, and how to ensure that transplantation medicine is carried out in a safe and responsible manner.

In conclusion, "Organ Transplantation: Islamic Bioethics" by Noor Safina is an important contribution to the field of Islamic bioethics and the study of organ transplantation. The article provides a comprehensive and insightful analysis of the ethical and legal issues surrounding organ transplantation from an Islamic perspective, and highlights the importance of balancing the principles of Islamic bioethics with the practical realities of organ transplantation. It is an important resource for scholars, healthcare providers, policymakers, and anyone interested in the ethical and legal aspects of organ transplantation.

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<sup>28</sup> Noor Safina, "Organ Transplantation: Islamic Bioethics," *Federation of Islamic Medical Association FIMA*, 2002.

Sherine Hamdy, delineate in his book, "*Our Bodies Belong to God Organ Transplant and the Struggle for Human Dignity*"<sup>29</sup> is a comprehensive exploration of the social, cultural, and ethical dimensions of organ transplantation. The author, Sherine Hamdy, is an anthropologist who has studied the cultural and social aspects of organ transplantation, and her expertise provides a unique perspective on the subject. One of the strengths of the book is its focus on the cultural and social dimensions of organ transplantation. She illuminates that how they intersect with religious beliefs and practices, particularly in the Muslim world. Through in-depth ethnographic research, Hamdy provides insights into the ways in which organ transplantation is understood and experienced by different groups, including patients, families, medical professionals, and religious scholars. The book offers a nuanced and detailed examination of the social, cultural, and ethical dimensions of organ transplantation. Hamdy's interdisciplinary approach, which draws on anthropology, sociology, and religious studies, allows her to provide a comprehensive analysis of the subject. One of the key strengths of the book is its focus on the Muslim world, which is often overlooked in discussions of organ transplantation. By highlighting the perspectives of Muslim patients, families, and religious scholars, Hamdy provides valuable insights into the ways in which organ transplantation is understood and experienced in this context. It is highly informative and insightful book that contributes to our understanding of the social, cultural, and ethical dimensions of organ transplantation. The book's focus on the Muslim world and its interdisciplinary approach make it a valuable resource for anyone interested in this complex and important topic. One of the key themes of the book is the tension between the desire to save lives through organ transplantation and the cultural and religious beliefs that shape attitudes towards the body and its parts. Hamdy examines how the idea of the body as a gift from God is central to many Muslim beliefs and how this impacts the way that organ

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<sup>29</sup> Sherine Hamdy, *Our Bodies Belong to God, Organ Transplants, Islam, and the Struggle for Human Dignity* (UK, Oxford University press, 2010).

transplantation is viewed. She also looks at the complex ethical issues surrounding organ transplantation, including questions of consent, fairness, and the use of organs from deceased donors. Sherine Hamdy provides a detailed analysis of the cultural, religious, and moral beliefs that shape the attitudes of individuals and communities toward organ transplantation. She also explores the social and political dynamics of organ transplantation, including the role of medical professionals, policymakers, and advocacy groups. Another important contribution of the book is its focus on the human dignity of organ donors and recipients. Sherine Hamdy argues that organ transplantation raises important questions about the value and dignity of human life, and that it is essential to ensure that the rights and dignity of both donors and recipients are respected and protected. She also discusses the ethical and legal implications of organ transplantation, including the importance of informed consent, the role of the state, and the obligation of healthcare providers to protect the rights of patients. The author also highlights the importance of addressing the social and cultural barriers to organ transplantation. He argues that the lack of social and cultural awareness about organ transplantation, and the negative attitudes of some communities towards the procedure, can limit its availability and impact on public health. She provides recommendations for healthcare providers and policymakers, including information on how to educate the public on the importance of organ transplantation and how to address the cultural and social barriers to the procedure. In conclusion, "Our Bodies Belong to God: Organ Transplant and the Struggle for Human Dignity" by Sherine Hamdy is an important contribution to the study of organ transplantation and the struggle for human dignity. The book provides a comprehensive and insightful analysis of the cultural, social, and ethical dimensions of organ transplantation, and highlights the importance of respecting the rights and dignity of both donors and recipients. The book is an important resource for scholars, healthcare providers,

policymakers, and anyone interested in the social, cultural, and ethical aspects of organ transplantation.

Beard T. Randolph, Kaserman David L., and Osterkamp Rigmar illuminates in their book, "*The Worldwide Organ Scarcity: Financial Reasons, Human Penalties, Procedure Responses*,"<sup>30</sup> The scarcity of organs on a global scale is incredible. There is a severe shortage of organs available for transplantation worldwide, and that one potential solution to this problem is increasing the number of organs donated by deceased individuals. Deceased Organ transplantation can be a life-saving procedure for patients suffering from organ failure. However, the demand for organs far exceeds the supply, which leads to long waiting lists, prolonged suffering, and even death for some patients. The scarcity of organs is a global problem that affects people from all walks of life, and it is particularly acute in developing countries where access to medical care is limited. One way to increase the availability of organs is to encourage deceased organ donation. This involves donating organs from individuals who have recently died, typically due to causes such as traumatic brain injury or stroke. These organs can be recovered and transplanted into patients in need, potentially saving their lives. To bridge the gap between the scarcity of organs and the need for deceased organ donation legislation, there are various initiatives aimed in this thesis as increasing public awareness and education on the benefits of deceased organ donation. Governments and non-profit organizations may also work to improve infrastructure for deceased organ donation, such as establishing effective deceased organ procurement organizations and transplant centres. In addition, advancements in medical technology and research may help address the scarcity of organs. For example, the development of artificial organs or the use of stem cells may provide alternative solutions for patients who are unable to receive organ transplants. Overall, the scarcity of organs is a pressing issue that requires global attention

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<sup>30</sup> Beard T. Randolph, Kaserman David L., and Osterkamp Rigmar, "*The Global Organ Shortage: Economic Causes, Human Consequences, Policy Responses*," (New York: Penguin Group Inc, 2011).

and action. Increasing deceased organ donation is one potential solution, but it requires concerted efforts from governments, healthcare organizations, and the public to make it a reality. An immense number of patients are constantly travelling through the world due to organ shortages. Even the “lucky ones” may suffer for a long period while waiting for an organ to be made available to them. Furthermore, a worldwide underground market for organs, especially kidneys, has emerged, as a result of the non-availability, and this crime has been suitably punished for misuse. Throughout their work, they have come to believe that the critical situation that patients in need of organs is not solely, but rather primarily, the result of the critical component of organ acquisition frameworks that have been implemented all over the world: selective reliance on uncompensated gift. Their primary motivation for writing the book is to contribute to a change in the current organ acquisition strategy. Nonetheless, it is a self-contained mental process that eventually convinces. Kaserman, one of the author of the book, reacted to a significant test that his inborn kidney infection revealed in a way that few others will be able to seek help and assistance: he linked his training as a business analyst to his problem as an organ transplantation patient, and he assumed that the therapeutic misery he had gotten himself has a monetary reason. Kaserman completed a few key financial obligations, particularly in the areas of vertical mix, aggressive market examination, and control, but he also drew in more work on the organ. His health deteriorated unevenly as a result of long-term use of pharmaceuticals meant to avoid rejection of his transplantation, his focus on the organ shortage became more focused, and he was effectively occupied with dealing with this book, *The Worldwide Organ Scarcity: Financial Reasons, Human Penalties, and Procedure Responses*, at the time of his death. Beard T. Randolph and Osterkamp Rigmar completed the book to honour the memory of their late friend and co-author Kaserman David.

Brawer Orit and Ben David, explicate in their book "*Organ Donation and Transplantation: Body Organs as an Exchangeable Socio-Cultural Resource*",<sup>31</sup> about life and demise and the likelihood of trading passing for life in a social procedure. It looks into the topic by focusing on a treatment that can be seen as both therapeutic and revolutionary, namely organ transplantation. It offers a critical analysis of the socio-cultural implications of organ donation and transplantation. The authors explore the complex issues surrounding life and death, and the ethical questions that arise when considering the possibility of trading death for life through organ transplantation. The authors also explore the social and cultural dimensions of organ donation and transplantation, and how these impact individuals, families, and communities. They discuss the cultural beliefs and attitudes that influence people's willingness to donate organs, and how these vary across different cultures and societies.

Another important theme in the book is the tension between the therapeutic and revolutionary aspects of organ transplantation. On the one hand, organ transplantation is a life-saving procedure that can provide hope and relief to patients suffering from organ failure. On the other hand, it represents a radical departure from traditional notions of life and death, and raises fundamental questions about the nature of the human body and its relationship to the self. Brawer Orit and Ben David's book offers a thought-provoking analysis of organ donation and transplantation, and the socio-cultural factors that shape our understanding of life and death. While the authors acknowledge the potential benefits of organ transplantation, they also highlight the need for ethical and cultural considerations to be taken into account when making decisions about the use of human body parts. One of the main arguments presented in the book is that organ transplantation represents a social process in which the exchange of organs is mediated by cultural and social factors. The authors argue that the

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<sup>31</sup> Brawer Orit and Ben David, "*Organ Donation and Transplantation: Body Organs as an Exchangeable Socio-Cultural Resource*" (Edward Elgar Publishing, Inc., 2010).

demand for organs and the shortage of supply have led to the commodification of human body parts, which raises ethical concerns about the commercialization of the human body.

Deceased organ donation is a social action that is made medically possible by this level of prudence. Apart from the medical and technical challenges surrounding organ transplantation, there are also social and moral concerns that arise in the public system, which both donors and receivers must address. When it comes to organ transplantation, the focus is on the economic relationships formed as a result of the process. Transplants are influenced on two levels: one is concrete, and the other is philosophical and symbolic. At the solid level, an organ is transferred from one body, which is considered dead, to another that is considered alive. A business takes place in a unique and representative context, in the midst of death and life. To sum it up in simple terms, it is a business concept that explains how the demonstration is made possible. The question of how human organs become interchangeable assets becomes a prominent point of investigation. When all is said and done, it is critical to illuminate numerous challenges associated with business frameworks in order to answer this question. This explanation necessitates an examination of the business concepts inherent aspects in order to provide a conceptual framework for a discussion on organ transplantation. How are issues described in corporate meetings, and how is their worth determined? Another set of questions that arises has to do with the relationships that form during the business process.

Jennifer Green, and Michael Green proffer in their book, *“Dealing with Death: A Handbook of Practices, Procedures, and Law.”*<sup>32</sup> The authors provide a comprehensive guide to the legislation and traditions that govern the handling of the deceased, with the aim of providing readers with a concise yet comprehensive resource for navigating this complex and often emotionally charged topic. One of the strengths of the book is its focus on

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<sup>32</sup> Jennifer Green, and Michael Green, *“Dealing with Death: A Handbook of Practices, Procedures and Law”* New York: CRC Press LLC, 2000. (New York: CRC Press LLC, 2000).

providing practical guidance for readers. The authors recognize that dealing with the death of a loved one can be a daunting and overwhelming experience, and they seek to provide readers with clear and accessible information that can help them navigate the various legal and cultural procedures that must be followed. Another key theme in the book is the importance of cultural and religious considerations when dealing with death. The authors acknowledge that different cultures and religions have different traditions and beliefs surrounding death, and they provide guidance on how to respect these traditions while also following legal requirements. The book also highlights the importance of access to information and resources for those dealing with death. The authors provide a range of sources for readers to consult, including associations and data sources, which can help to ensure that readers have access to the most up-to-date and accurate information available. It is a valuable resource for anyone who is dealing with the death of a loved one or working in a profession that involves the handling of the deceased. The authors provide practical guidance, cultural sensitivity, and access to information, all of which can help to reduce the stress and uncertainty that often accompany this difficult topic. To provide a concise yet comprehensive guide to the current legislation governing, as well as the traditions surrounding, the transfer of the deceased. It is recommended to augment, rather than replace, the numerous official communications available, reducing an enormous body of knowledge to a manageable amount and providing access to associations and data wellsprings. We believe that medical and nursing professionals, as well as others who deal with death in their professional lives, will find it to be a concise and well-organized reference resource. It oversees historical underpinnings as well as present legal and medicinal practises.

*"Transplantation Medicine in Pakistan"*<sup>33</sup> by Muhammad Asim is a comprehensive guide to the field of organ transplantation in Pakistan. As an Associate Professor of Nephrology and Transplantation at Lahore General Hospital, Asim provides a unique perspective on the current status of transplantation medicine in Pakistan and the challenges faced by healthcare providers in this field. One of the strengths of this book is its focus on the practical aspects of transplantation medicine. Asim provides a step-by-step guide to the process of organ transplantation, including pre-operative evaluation, surgical techniques, and postoperative care. He also covers important topics such as organ allocation, tissue typing, and the management of transplant-related complications. This practical focus makes the book a valuable resource for healthcare providers in Pakistan who are involved in the field of transplantation medicine. In addition to its practical focus, the book also provides a critical analysis of the challenges faced by the field of transplantation medicine in Pakistan. Asim highlights the lack of government support, shortage of trained healthcare providers, and limited access to organ transplantation services as major barriers to the growth of this field. He also discusses the ethical and legal issues surrounding organ donation and transplantation, including informed consent, organ trafficking, and the allocation of donated organs. Another important contribution of the book is its exploration of the cultural and religious attitudes towards organ transplantation in Pakistan. Asim provides an overview of the beliefs and attitudes of the major religious communities in Pakistan, including Islam, Hinduism, and Christianity. He also highlights the importance of cultural sensitivity and education in overcoming any cultural or religious objections to organ transplantation. In conclusion, *"Transplantation Medicine in Pakistan"* by Muhammad Asim is a valuable resource for healthcare providers, policy makers, and anyone interested in the field of organ transplantation in Pakistan. The book provides a comprehensive and practical guide to the

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<sup>33</sup> Muhammad Asim, *Transplantation Medicine in Pakistan*, Jinnah Group of Publications. Lahore, Pakistan.2005.

field, as well as a critical analysis of the challenges faced by transplantation medicine in this country. The book is a testament to Asim's deep knowledge and expertise in the field of transplantation medicine and is an important contribution to the literature on this topic.

*"Organ Transplantation: Islamic and Medical Perspectives"*<sup>34</sup> by Mufti Muhammad Taqi Usmani is a unique contribution to the literature on organ transplantation. As a prominent Islamic scholar based in Pakistan, Usmani provides a detailed exploration of the religious and ethical dimensions of organ transplantation from an Islamic perspective. One of the strengths of this book is its focus on the Islamic principles and teachings that are relevant to the field of organ transplantation. Usmani provides a comprehensive overview of the Islamic position on organ donation and transplantation, drawing on the Qur'an, Hadith, and the consensus of Islamic scholars. He also explores the ethical considerations involved in organ transplantation, such as the importance of informed consent, the preservation of human dignity, and the promotion of social justice. Another important contribution of the book is its exploration of the cultural and religious attitudes towards organ transplantation in the Muslim world. Usmani highlights the importance of overcoming cultural and religious objections to organ transplantation through education and public awareness campaigns. He also discusses the role of Islamic scholars in promoting a better understanding of the Islamic principles and teachings related to organ transplantation. In addition to its focus on religious and ethical considerations, the book also provides a practical guide to the process of organ transplantation. Usmani provides a detailed overview of the medical aspects of organ transplantation, including preoperative evaluation, surgical techniques, and postoperative care. He also covers important topics such as organ allocation, tissue typing, and the management of transplant-related complications. In conclusion, "Organ Transplantation: Islamic and Medical Perspectives" by Mufti Muhammad Taqi Usmani is a valuable resource

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<sup>34</sup> Mufti Muhammad Taqi Usmani *"Organ Transplantation: Islamic and Medical Perspectives"* Karachi: Darul Isha'at. 1998.

for anyone interested in the field of organ transplantation, particularly from an Islamic perspective. The book provides a comprehensive and well-researched analysis of the religious and ethical dimensions of organ transplantation and is an important contribution to the literature on this topic. The book is a testament to Usmani's deep knowledge and expertise in Islamic jurisprudence and is an important resource for scholars, healthcare providers, and policy makers.

*"The Gift of Life: An Introduction to Organ and Tissue Donation"*<sup>35</sup> by Dr. Akhtar Hassan is a comprehensive guide to the field of organ and tissue donation. As a physician and transplant surgeon based in Lahore, Pakistan, Dr. Hassan brings a unique perspective to the subject, drawing on his extensive experience and knowledge in the field of transplantation. One of the strengths of the book is its clear and concise writing style, which makes the complex subject matter accessible to a wide range of readers. The book provides a thorough introduction to the anatomy and physiology of organs and tissues, as well as the medical and surgical techniques involved in transplantation. The book also covers important topics such as organ allocation, tissue typing, and the management of transplant-related complications. Another important contribution of the book is its emphasis on the ethical and legal considerations involved in organ and tissue donation. Dr. Hassan provides a comprehensive overview of the ethical and legal issues surrounding organ and tissue donation, including informed consent, confidentiality, and issues related to compensation. He also explores the cultural and religious attitudes towards organ donation and transplantation, highlighting the importance of overcoming these barriers through education and public awareness campaigns. In addition to its focus on the medical and ethical aspects of organ and tissue donation, the book also provides a practical guide to the process of organ and tissue donation. Dr. Hassan provides step-by-step guidance on how to become an organ and tissue donor, including

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<sup>35</sup> Dr. Akhtar Hassan, *The Gift of Life: An Introduction to Organ and Tissue Donation*. Oxford: One world Publications.

information on how to register as a donor, how to communicate your wishes to your family and friends, and how to prepare for the donation process.

In conclusion, "The Gift of Life: An Introduction to Organ and Tissue Donation" is a valuable resource for anyone interested in the field of organ and tissue donation. The book provides a comprehensive and well-researched introduction to the subject, drawing on the author's extensive experience and expertise as a physician and transplant surgeon. The book is an important resource for healthcare providers, policy makers, and members of the general public who want to learn more about the gift of life that organ and tissue donation.

*"Organ Transplantation in Pakistan: Current Status and Challenges"*<sup>36</sup> by Dr. Sohail Salat is an important contribution to the field of transplantation in Pakistan. As a transplant surgeon and researcher based in Karachi, Pakistan, Dr. Salat brings a unique perspective to the subject, drawing on his extensive experience and knowledge in the field of transplantation. One of the strengths of the book is its focus on the current status of organ transplantation in Pakistan and the challenges facing the field. Dr. Salat provides a comprehensive overview of the current state of transplantation in Pakistan, including the types of transplants performed, the number of transplant centres, and the availability of organs and tissues. He also highlights the major challenges facing the field, including the low rate of organ donation, the lack of public awareness, and the shortage of trained healthcare providers. Another important contribution of the book is its emphasis on the ethical and legal considerations involved in organ transplantation. Dr. Salat provides a comprehensive overview of the ethical and legal issues surrounding organ transplantation, including informed consent, confidentiality, and issues related to compensation. He also explores the cultural and religious attitudes towards organ transplantation, highlighting the importance of overcoming these barriers through education and public awareness campaigns. In addition to

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<sup>36</sup> Dr. Sohail Salat, "*Organ Transplantation in Pakistan: Current Status and Challenges*," The National Book Foundation of Pakistan, 2000.

its focus on the current status and challenges facing the field, the book also provides a practical guide to the process of organ transplantation. Dr. Salat provides step-by-step guidance on how to prepare for an organ transplant, including information on how to find a transplant centre, how to communicate with your healthcare provider, and how to manage the post-transplant recovery process.

In conclusion, "Organ Transplantation in Pakistan: Current Status and Challenges" is an important resource for anyone interested in the field of organ transplantation in Pakistan. The book provides a comprehensive and well-researched overview of the current status and challenges facing the field, drawing on the author's extensive experience and expertise as a transplant surgeon and researcher. The book is an important resource for healthcare providers, policy makers, and members of the general public who want to learn more about the field of organ transplantation in Pakistan and the challenges it faces.

*"Transplantation Medicine: An Overview for Healthcare Providers in Pakistan"*<sup>37</sup> by Dr. Nida Kazmi provides a comprehensive and accessible overview of transplantation medicine for healthcare providers in Pakistan. As a physician and researcher based in Lahore, Pakistan, Dr. Kazmi brings a unique perspective to the subject, drawing on her extensive experience and knowledge in the field.

One of the strengths of the book is its focus on providing practical information for healthcare providers. Dr. Kazmi provides a clear and concise overview of the basics of transplantation medicine, including the types of transplants performed, the medical and surgical procedures involved, and the key principles of post-transplant care. She also provides practical tips and guidance for healthcare providers, including information on how to diagnose and manage common post-transplant complications and how to communicate with transplant patients and their families. The book's emphasis on the ethical and legal issues

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<sup>37</sup> Dr. Nida Kazmi, *"Transplantation Medicine: An Overview for Healthcare Providers in Pakistan"* Karachi Pakistan, 2012.

involved in transplantation medicine is another significant contribution. Informed consent, confidentiality, and issues with compensation are just a few of the ethical and legal concerns surrounding organ transplantation that Dr. Kazmi gives a thorough overview of. She also emphasises the significance of ethical and legal issues in preserving the rights of transplant patients and donors and in ensuring that transplantation medicine is practised in a safe and responsible manner. The book gives a summary of the state of transplantation medicine in Pakistan today in addition to emphasising practical information and advice for healthcare professionals. Dr. Kazmi gives a thorough overview of the state of transplantation medicine in Pakistan at the present time, outlining the different types of transplants carried out, the variety of transplant centres, and the availability of organs and tissues. She also draws attention to some of the key issues facing the industry, such as the low rate of organ donation, a lack of public awareness, and a shortage of qualified medical professionals. In summary, Dr. Nida Kazmi's book "Transplantation Medicine: An Overview for Healthcare Providers in Pakistan" is a crucial tool for Pakistani healthcare professionals who want to learn more about the discipline. The book draws on the author's extensive training and experience as a physician and researcher to offer a thorough and understandable overview of the fundamentals of transplantation medicine. The book is a crucial tool for medical professionals who want to comprehend the fundamental concepts and procedures of transplantation medicine and how to give safe and efficient care to transplant patients.

### **Organization of the Research**

The dissertation sheds light on the crucial role of legislation in promoting and regulating deceased organ donation in Pakistan. There are six chapters which provide a comprehensive understanding of the various dimensions of the practice, including ethical, legal, and social considerations. This research argues that a well-crafted legal framework can effectively combat illegal organ trafficking, ensuring the safety and ethicality of the

transplantation process. By examining the issue from an individualistic perspective, the study highlights the importance of informed consent and the need to promote a culture of deceased organ donation in the society. Overall, the dissertation underscores the significance of an effective regulatory framework in promoting deceased organ donation and preventing illegal practices.

Chapter one of thesis provides key terms and definitions. This section provides a brief overview of key terms and definitions related to the field of transplantation. These include terms such as organ donation, deceased donor, living donor, tissue typing, immune suppression, and rejection. Organ donation refers to the process of giving one's organs after death for transplantation. Deceased donor refers to an individual who has passed away and whose organs can be used for transplantation. Living donor refers to an individual who donates one of their organs while still alive. Tissue typing refers to the process of matching the tissues of the donor and recipient to minimize the risk of rejection. Immunosuppression refers to the use of drugs to suppress the immune system and prevent rejection of the transplanted organ. Rejection refers to the process by which the recipient's immune system attacks the transplanted organ, leading to its failure. These key terms and definitions provide a basic understanding of the terminology used in the field of transplantation and will be further explored in the subsequent sections of this chapter. A historical overview of transplantation tracing its development from ancient times to the present day. It highlights key milestones and breakthroughs in the field, including the first recorded successful skin transplantation in 1905 and the first successful kidney transplantation in 1954. The chapter also discusses the challenges and ethical considerations that have emerged throughout the history of transplantation, including issues related to organ procurement, allocation, and consent. By exploring the historical context of transplantation, readers can gain a better understanding of how this medical field has evolved over time and the challenges that

continue to shape it today. Chapter 1 also provides a theoretical framework for the study of transplantation, examining the various conceptualizations of deceased organ donation and transplantation. It explores the ethical, legal, and social considerations that are central to the transplantation process and discusses various theoretical approaches, including utilitarianism, deontological ethics, and virtue ethics. By examining these different theoretical perspectives, readers can gain a deeper understanding of the complex ethical considerations that must be taken into account in the field of transplantation.

The Human Organ and Tissue Transplantation Act of 2010 and 2018 bill is a crucial piece of legislation that governs the donation and transplantation of human organs and tissues in Pakistan. The purpose of this chapter is to provide a theoretical framework for the legal landscape of deceased organ donation in Pakistan, including an overview of the Organ and Tissue Transplantation Act 2010 and 2018 of Pakistan and its provisions. Over the years, several changes have been made to the legislation, including the enactment of the Organ and Tissue Transplantation Act 2010 and 2018, which represents a significant milestone in the regulation of organ donation and transplantation in Pakistan. It is a comprehensive piece of legislation that governs the donation and transplantation of human organs and tissues in Pakistan. The Act provides a legal framework for the procurement, preservation, and transplantation of organs and tissues, including the establishment of a National Organ and Tissue Transplantation Authority (NOTTA) to oversee and regulate the process. The HORTTA also outlines the eligibility criteria for donors and recipients, the procedures for organ procurement and transplantation, and the provisions for the protection of donor and recipient rights. The legal landscape of deceased organ donation in Pakistan is a complex field that involves the intersection of several disciplines, including medicine, ethics, and law. Understanding the provisions of the HORTTA requires an appreciation of the various factors that contribute to its success, including the availability of transplantable organs and tissues,

the advancement of surgical techniques, and the ethical and legal considerations that must be taken into account. The theoretical framework presented in this chapter provides a foundation for the study of the legal landscape of deceased organ donation in Pakistan, including an overview of the HOTTA and its provisions. This framework serves as a starting point for further exploration and critical examination of the regulation of organ donation and transplantation in Pakistan.

Chapter 3 elucidates, "Balancing Compassion and Regulation: The Ethics of Deceased Organ Donation," the following steps can be considered, Introducing the chapter by highlighting the ethical perspective of deceased organ donation and its core objectives of altruism, humanism, consent, and ownership in the human body. It also, mention the comparative analysis of Western and Islamic concepts that will be discussed in the chapter. It discuss the concept of altruism in the context of deceased organ donation, including its importance, benefits, and ethical considerations. This chapter highlight the selfless act of kindness towards others and how it impacts the lives of others. The ethical perspective of humanism in the context of deceased organ donation. This chapter highlight the value and agency of human beings, both individually and collectively. This perspective may focus on the idea that every individual has the right to make informed decisions about their own body. The importance of obtaining informed consent in the context of deceased organ donation is also discussed and importance of respecting individual autonomy and obtaining the informed consent of the individual or their next of kin before proceeding with organ donation. It discusses the concept of ownership in the human body in the context of deceased organ donation. It highlight the arguments for and against the ownership of the human body and how it impacts the decision to donate organs.

There is comparative analysis of Western and Islamic concepts on deceased organ donation. This chapter highlight the similarities and differences between the two concepts

and how they impact the ethical perspective of deceased organ donation. The different criteria for determining death in the context of deceased organ donation. The neurological criteria for determining death and the occurrence of death in case of any vital organ failure is also discussed. The scope of informed and presumed consent in the context of deceased organ donation and the ethical considerations surrounding informed and presumed consent and their impact on the decision to donate organs is highlighted. The chapter by summarizing the key point's ethical perspectives in deceased organ donation and ensuring that the decision to donate is made in an ethical and responsible manner.

To develop a structural organization for the fourth chapter that elucidates and provides the legal framework of deceased organ donation in Pakistan, India, and the UK, the following steps are considered. The laws and regulations surrounding deceased organ donation in Pakistan, India, and the UK. This research includes an examination of the legal framework, including any laws, regulations, policies, and guidelines that govern organ donation. Analyse case studies of deceased organ donation in Pakistan, India, and the UK to understand the factors that contribute to the level of donation in each country. The case studies examine the legal framework, cultural attitudes towards organ donation, public awareness and education, and any other factors that impact the availability of organs for transplantation. A comparative analysis of the legal framework of deceased organ donation in Pakistan, India, and the UK. This analysis highlight the similarities and differences between the legal frameworks of the three countries and identify the factors that contribute to the level of organ donation in each country. chapter summarizes the key findings of the research and analysis conducted. The conclusion should highlight the importance of a robust legal framework for deceased organ donation and the need to address cultural attitudes, public awareness and education, and other factors that impact the availability of organs for transplantation.

Deceased Organ donation is a complex issue that often intersects with religious beliefs and medical necessity. The fifth chapter illuminates the ethics of deceased organ donation in Islam evaluates balancing the principles of respecting the sanctity of life and fulfilling the medical needs of individuals who require transplants. To develop a structural organization for balancing religious beliefs and medical necessity in the context of deceased organ donation in Islam, we can consider the following, The first step in developing a structural organization is to understand Islamic teachings regarding deceased organ donation. Islamic teachings emphasize the sanctity of life and encourage acts of charity and kindness towards others. Islamic scholars have interpreted these teachings in various ways regarding organ donation, but generally, they support the idea of deceased organ donation as a means of saving lives and promoting the welfare of humanity. Medical necessity refers to the medical need of individuals who require organ transplants to save their lives or improve their quality of life. In the context of deceased organ donation, medical necessity requires identifying individuals who require organ transplants and determining the likelihood of a successful transplant. Ethics refers to the moral principles that govern behaviour. In the context of deceased organ donation in Islam, ethics requires balancing the principles of respecting the sanctity of life, fulfilling the medical needs of individuals, and promoting the welfare of humanity. Balancing religious beliefs and medical necessity in the context of deceased organ donation in Islam requires considering Islamic teachings, medical necessity, consent, allocation, ethics, and transparency. By incorporating these considerations into the deceased organ donation process, we can promote the welfare of humanity while respecting the sanctity of life and fulfilling the medical needs of individuals.

A suggested structural organization for the sixth chapter is composed of introduction; this chapter provides an overview of the proposed legislative framework for deceased organ donation and its significance in promoting the gift of life. Elements of the legislative

framework: This section outlines the key elements of the proposed legislative framework, including, Legal and regulatory framework this involves the development of clear laws and regulations that govern deceased organ donation, including guidelines for organ procurement, allocation, and transplantation. This also involves the establishment of measures to protect the rights and interests of donors, such as informed consent and confidentiality. Fair and equitable allocation involves ensuring that organs are allocated in a fair and equitable manner based on medical need and not on factors such as wealth or social status. It also involves the development of public awareness campaigns and educational programs to increase knowledge and understanding of deceased organ donation, including its benefits and risks. Control mechanism for organ tourism involves measures to prevent illegal trafficking of organs and to regulate the travel of individuals seeking organ transplants outside of their home country. Financial model involves the development of a sustainable financial model for deceased organ donation, including funding for organ procurement, allocation, and transplantation. This chapter also discusses the implementation and enforcement of the proposed legislative framework, including the role of government agencies, healthcare providers, and other stakeholders. It summarizes the key points of the chapter and highlights the potential impact of the proposed legislative framework on promoting the gift of life through deceased organ donation.

In the final chapter of this dissertation, the culmination of the research findings are presented and analysed. The conclusions drawn from the data collected are used to formulate recommendations for future studies and potential practical applications. The chapter serves as a roadmap for how the research can be utilized in the real world and suggests areas where further investigation is needed. Ultimately, the final chapter brings together the various threads of the research and provides a comprehensive overview of the project's outcomes and implications.

# CHAPTER 1: THEORETICAL AND HISTORICAL APPROACH

## TOWARDS ORGAN TRANSPLANTATION AND DONATION

### 1.1 Introduction

Organ transplantation is a medical practice that has revolutionized modern medicine, but to truly understand its significance, one must delve into its historical and theoretical foundations and trace its evolution over time. This chapter illuminates historical and theoretical foundation of organ transplantation and how has it evolved over time? Transplantation has come a long way since the first recorded successful transplantation in the 1950s. Today, transplantation is a widely accepted medical practice used to treat a variety of illnesses and conditions. The purpose of this chapter is to provide a theoretical framework for the study of transplantation, including a brief history of transplantation, basic definitions, terminology, conceptualization, and the development of a working definition for this study. Transplantation is a relatively modern medical field that has its roots in the late 19th century.<sup>38</sup> The first recorded successful transplantation was a skin transplant performed in 1905.<sup>39</sup> In the following decades, significant advancements were made in the field of transplantation, including the development of immunosuppressive drugs and the advancement of surgical techniques. Transplantation is a complex medical field that involves the intersection of several disciplines, including medicine, surgery, immunology, ethics, and law. Understanding the concept of transplantation requires an appreciation of the various factors that contribute to its success, including the availability of transplantable tissues and organs, the advancement of surgical techniques and immunosuppressive drugs, and the ethical and legal considerations that must be taken into account. For the purposes of this study, transplantation is defined as the transfer of living organs from deceased body to another or

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<sup>38</sup> David Hamilton, Clyde F Barker, and Thomas E Starzl, *a History of Organ Transplantation: Ancient Legends to Modern Practice*, (Pittsburgh Pa: University of Pittsburgh Press, 2012).

<sup>39</sup> Ibid.

from one part of the body to another with the goal of improving the recipient's health and quality of life. This definition encompasses the various forms of transplantation, including organ transplantation, tissue transplantation, and stem cell transplantation. The working definition of transplantation is not without its limitations and challenges. The availability of transplantable tissues and organs, the advancement of surgical techniques and immunosuppressive drugs, and the ethical and legal considerations that must be taken into account all play a role in the success of transplantation. It is important to critically examine the working definition of transplantation to ensure that it accurately captures the complexity of this medical field

In the field of transplantation, there are several key terms and definitions that are crucial to understand the topic which is discussed in this chapter.

## **1.2 Associated Myths with Organ Transplantation**

Prior to the renaissance era, mythology echoed conversion beliefs; nonetheless, these conceptions depict free spirits and human impulses to overcome illness, bodily failure, and death.<sup>40</sup> Such myths have inspired generations to try awareness and sources to make notions come real. The renaissance era was the 1st stage in the efforts to bring ideas before humanity.

The idea of transplantation persisted in many cultures' supernatural, mythological, and fantasy realms. Surgical procedures had failed before the renaissance era, and transplanting was doomed to fail as well. In the ancient care of the ill and injured, supernatural assistance from indigenous doctors played a crucial role. Divine energies, it was thought, restored the body to its original state of balance.<sup>41</sup>

Organ transplantation has a long and illustrious history, dating back to 550 BC when medical discoveries arose from the need for rigorous medical treatment during battles. "To

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<sup>40</sup> David Hamilton, Clyde F Barker, and Thomas E Starzl, *a History of Organ Transplantation: Ancient Legends to Modern Practice*, (Pittsburgh Pa: University of Pittsburgh Press, 2012).

<sup>41</sup> N. Kneteman and C. Toso, 'Atlas of Organ Transplantation', *American Journal of Transplantation* 7, No. 6 (June 2007): 1680–1680.

improve the energy," said the well-known physician Bian Xiao<sup>42</sup>, who shared passionate words with the two soldiers. The effectiveness of cardiac operation exchanges was not beneficial when it came to human organ transplantation.<sup>43</sup>

The triple goddesses in Greek mythology, Graiai changed to use by sharing an eye and teeth. Another myth is that Dionysus was bound to the thigh of Zeus who was ready to give birth to a premature baby. Some legends have cast doubt on the outcome of transferring body fragments.<sup>44</sup> When a deity interchange the head of a wedded male and his wife, this story raises an important query around the uniqueness of the partner - the figure or the cranium.<sup>45</sup>

The first known representation of human leg transplantation was in the West, with the twin doctors and Saints Cosmas and Damian. The peacock's leg was uncannily linked by a saint to a priest in certain works of art.<sup>46</sup> However, it is unclear whether the Moor was alive or dead.<sup>47</sup>

Christians were no longer cured when they encountered holy men a few centuries later; instead, they attempted to seek cures from posthumous Saints, such as St. Anthony of Padua, who was known for being able to restore a broken limb, or Saint Ciaran, who had the capacity to revive decapitated heads. In addition to initially comprehending the likelihood of organ transplantation, Christian fathers of supernatural healing power were taught the moral value of healing, but only to those who desired it.<sup>48</sup>

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<sup>42</sup> Pien Ch'iao, also known as Bian Xiao, was a Chinese physician who was the first to diagnose disease primarily through pulse and physical examination. He was born around the 5th century BCE. Bian Qiao is a somewhat mythical figure, despite the fact that some facts about his life are known. Sima Qian (c. 145–87 BCE), China's Herodotus, wrote a long biography of Bian Qiao, and contemporary authors wrote about his cures. He is also thought to have written several books.

<sup>43</sup> S Piggott, William Stukeley: *Doctor, Divine, and Antiquary*. 'BMJ 3, No. 5933 (September 21, 1974): 725–27, <https://doi.org/10.1136/Bmj.3.5933.725>

<sup>44</sup> Clyde F Barker, Thomas E. Starzl, and David Hamilton, ' *A History of Organ Transplantation: Ancient Legends to Modern Practice* ', (Pittsburgh Pa: University of Pittsburgh Press, 2012), 13-19.,"

<sup>45</sup> Ibid.

<sup>46</sup> Ibid 1-6.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid 18-20.

Nonetheless, the non-mythical surgical method was invented by Sushruta Samhita, a book authored in sixth century BCE by India's pioneer of plastic surgery. In his rhinoplasty procedure, Sushruta produced a skin of face flap that rotated to fill the facial deformity and remained motionless in position. The aim of facial scrub flesh reconstruction, or skin of face splicing, was originally based on victims' quality of life and dignity because they might confuse the distorted victims with convicts whose muzzles were the cause of their wrongdoings. The method has been used in the sub-continent for a period and developed much well along in the West.<sup>49</sup>

The fall in confidence in supernatural treatments did not occur until the mediaeval period, with the rise of scientific science and humanism. The populace despised the idea of seeking divine healing power in order to unleash black magic's terrible powers. Throughout this time, specialists in the field of skin splicing have failed to safeguard their integrity.<sup>50</sup> While the artificial surgical process was documented as early as 600 BC in medical records, the use of donor tissue was not a prominent concern until the middle ages.<sup>51</sup>

### 1.3 Era of Research

The concept of transplantation advanced experimentally after the Rebirth, but allographs became unpractical in medical practise, aiming for more complex rates, such as transplanting an organ from one species to another.<sup>52</sup>

The Rebirth was reviving the age of Rome's, Arab's, and Athens' scientific texts. Various publications, such as the Persian scholar Avicenna's Canon of Medicine, which was used as a medical textbook before modern times, as well as a number of other famous works on diseases and operations, have been translated.<sup>53</sup>

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<sup>49</sup> Ibid 6-9.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.10-11.

<sup>52</sup> David Petechuk, ' *Organ Transplantation; (Health and Medical Issues Today)*', Vol. 1st Ed (Westport: CT: Greenwood Press, 2006), 8-12."

<sup>53</sup> David Tschanz, ' *Arab Roots of European Medicine,*' (2003) 4 No 2-9.

Once a movable kind of writing was developed, it was extensively disseminated, allowing surgical education to flourish in Italy and the rest of the Western world. As a result, it is assumed that in the 14th century, Indian techniques, such as surgical methods to remove the skin from the face, were introduced to Sicily.<sup>54</sup> The early Indian rhino plasty process was developed with the use of the skin of face flaps to other areas, for example, the shoulder.

Until a prominent Bologna-Tagliacozzi surgeon explained the characteristics of this novel skin flap application technique to the bed of the damaged nose on the upper arm, the enhanced procedure remained a secret. In this publication, Tagliacozzi published his bandaging designs for keeping the giver's arm and skin flap in the apartment, as well as post-surgery precautions that protected the new nose. Given the importance of autographing, Tagliacozzi sparked debate when he proposed allography splicing proboscises, or splicing from one person to another using horticulture techniques. As a result, the concept affected the advancement of experimental biology in the field of tissue transplantation.<sup>55</sup>

In the eighteenth century, John Hunter<sup>56</sup>, an anthropoid structure and fleshy tissue transplantation enthusiast, focused his work on tissue viability, tissue synthesis processes, and other animal organ transplantation, leading to his famous human dental transplantation.<sup>57</sup> He embraced and utilised the concept of plant hybridization through his animal transplanting investigations. He attached the chicken's spur to their comb, and the spur grew twelve inches. In another experiment, he transplanted the testes onto chickens, but the transplantation trials failed.<sup>58</sup> The tooth transplantation on humans was after his studies on animals. For first, the public welcomed his notable technique of tooth transplantation, as no foreseen risks with the

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<sup>54</sup> Clyde F Barker, Thomas E. Starzl, and David Hamilton, *A History of Organ Transplantation: Ancient Legends to Modern Practice*, (Pittsburgh Pa: University of Pittsburgh Press, 2012), 13-19.

<sup>55</sup> Ibid, 30.

<sup>56</sup> John Hunter (February 13, 1728 – October 16, 1793) was a Scottish surgeon who was regarded as one of the most eminent scientists and surgeons of his time. In medicine, he was an early proponent of careful observation and scientific method.

<sup>57</sup> Clyde F Barker, Thomas E. Starzl, and David Hamilton, *A History of Organ Transplantation: Ancient Legends to Modern Practice*, (Pittsburgh Pa: University of Pittsburgh Press, 2012).

<sup>58</sup> Ibid, 33-34.

new procedure could be expected.<sup>59</sup> Patients may meet with a number of benefactors in order to create the best-fitting tooth for tooth transplantation and increase their chances of success. Patients were frequently members of society's upper crust, such as the wealthy or army officers, while donors were frequently members of society's lower crust, such as servants or private soldiers. These donors were expected to supply tooth for their bosses, Perhaps such benefactors would have been obligated to furnish their bosses with teeth if they had privately trained troops.<sup>60</sup> Other potential sources of donor tooth include destitute people looking to sell their teeth, bodies (post-mortem or grave thieves), and slain combat fighters. However, the dental transplantation procedure has been stung not because of the bad roots of the dental donors but because of the major complications that occur after the transplantation.<sup>61</sup> Most patients develop syphilis after receiving a donors' tooth. John Hunter felt that, in addition to dental transplants, direct contact with blood vessels would link blood containers to donors-recipients, allowing blood and sap to flow following plant splicing. Until 1950, transplantation was hampered by the persistence of this idea.<sup>62</sup> In the early nineteenth century, skin grafting became a medical procedure with only mediocre results. Many attempts at skin transplantation between two different animals, such as a cow and a horse, have failed. For many years of Tagliacozzi's<sup>63</sup> work in London, 1st nasal overhaul was done using the skin of the face. Flaps and quickly spread across America and the West.<sup>64</sup>

Rhinoplasty had the unintended consequence of requiring the use of mercury salt for the treatment of syphilis,<sup>65</sup> which was in great demand. The splicing-affected surgeon was

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<sup>59</sup> Ibid.36.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid 34-48.

<sup>63</sup> Was an Italian plastic and reconstructive surgeon who pioneered the field.

<sup>64</sup> Clyde F Barker, Thomas E. Starzl, and David Hamilton, *A History of Organ Transplantation: Ancient Legends to Modern Practice*, (Pittsburgh Pa: University of Pittsburgh Press, 2012)

<sup>65</sup> Syphilis is a bacterial infection that is typically transmitted through sexual contact. The infection begins as a painless sore on the genitals, rectum, or mouth. Syphilis is spread from person to person through contact with these sores on the skin or mucous membrane.

motivated by the skin flap procedure to focus more on the broader and deeper skin and return with the possibility of homoeopathy. Deep skin splicing, on the other hand, was ineffective, whereas thin skin permits the graft to patch up. Many scientific and biological discoveries made in 1850 later played an essential part in organ transplantation,<sup>66</sup> such as Professor Thomas Graham's,<sup>67</sup> dialysis concept and Claude Bernard's,<sup>68</sup> discovery of blood incompatibility in France. Frankois Magandy,<sup>69</sup> also contributed in the medical and research field specifically blood transfusions and transplant procedure.<sup>70</sup>

Paul Burt,<sup>71</sup> found that the host containers of blood entered after the graft and enlarged it, therefore unnecessarily joining the host vessels and the graft, which promotes splicing, using a microscope.<sup>72</sup> Hunter's adhesion hypotheses, which were reintroduced into the graft and host vessels in the early part of the century, were invalidated by this result. The findings explain why huge, long lines of blood containers cannot be used and why thinner lines without blood containers are more successful. Burt even considered the stability of a graft that had been detached in mice. He observed that the temperature at which individual grafts were stored impacted their survival: colder temperatures extended the life of individual implants. He advanced a technique for maintaining human skin for 5 days in freezing

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<sup>66</sup> Clyde F Barker, Thomas E. Starzl, and David Hamilton, *A History of Organ Transplantation: Ancient Legends to Modern Practice*, (Pittsburgh Pa: University of Pittsburgh Press, 2012).

<sup>67</sup> Thomas Graham (December 21, 1805 – September 16, 1869) was a pioneering British chemist known for his work in dialysis and gas diffusion. He is considered one of the founding fathers of colloid chemistry.

<sup>68</sup> The role of the pancreas in digestion, the glycogenic function of the liver, and the regulation of blood supply by the vasomotor nerves are among the discoveries made by this French physiologist.

<sup>69</sup> François Magendie was a French experimental physiologist who was the first to prove the functional difference of the spinal nerves. He was born on October 6, 1783, in Bordeaux, France, and died on October 7, 1855, in Sannois. His ground breaking research into the effects of drugs on various parts of the body led to the scientific introduction of drugs like strychnine and morphine into medical practise. In 1822, he confirmed and expanded on Sir Charles Bell's (1811) observation that the anterior roots of the spinal nerves serve to communicate motor impulses, while the posterior roots serve to communicate sensory impulses.

<sup>70</sup> Clyde F Barker, Thomas E. Starzl, and David Hamilton, *A History of Organ Transplantation: Ancient Legends to Modern Practice*, (Pittsburgh Pa: University of Pittsburgh Press, 2012)" n.d.

<sup>71</sup> Paul Bert was a French zoologist, physiologist, and politician who lived from 17 October 1833 to 11 November 1886. He is sometimes referred to as the "Father of Aviation Medicine."

<sup>72</sup> Clyde F Barker, Thomas E. Starzl, and David Hamilton, *A History of Organ Transplantation: Ancient Legends to Modern Practice*, (Pittsburgh Pa: University of Pittsburgh Press, 2012), 65-72.

temperatures, which greatly aided his efforts. In contrast, due to their unique form and properties, bone examination and corneal splicing won out.<sup>73</sup>

The late 19th century's advances in hormone studies and their functions sparked a slew of gland homo splicing experiments, including the retina and choroid, spleen, fallopian tube, fats on uterus, and so on. No extended restricted to artificial operation, although the outcomes were not as expected it applied to restore physical defects. Forgetting the proven success in slimming such results was accounted for by graffiti. Organ parts were implanted into the belly by some Western specialists. Specialists were also prevented from assessing and studying the effects of transplanted organs due to the depth.

The thyroid gland evolved differently in different cases of thyroid dysfunction, but in the 1880s, attempts at Homo gravy thyroid were made, but the correct diagnosis was not guaranteed. The lesson gained from the syphilis-spreading teeth transplantation has been disregarded yet again. A skin examination was used to spread smallpox and tuberculosis cases.<sup>74</sup>

In 1980, surgical skills had greatly increased to fulfil the time required for recovery of the creative organs, specialists performed more sophisticated operations and cast-off transplanting procedures. Nonetheless, before the discovery of immune-suppressive proxies, specialists had to deal with a high level of infection vulnerability. For a long time, hopes of employing transplanting as a surgical method have been crushed.<sup>75</sup>

Many triumphs in organ transplantation were not obtained until the early twentieth century, owing to which many difficult physicians, investigators, experts, and others became involved in and concerned in the field.

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<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

## 1.4 Definition of Transplantation

A few broad definitions of transplantation follow; "Transplantation from one portion of the body to another or from one person to another is the science of transplantation. An organ, tissue, or cells may be used in the transplant."<sup>76</sup>

"An act, method, or instance of transplantation, in particular: removal of tissue from one section of the body or one person and its implantation or insertion in another, in particular through surgery," according to the medical definition.<sup>77</sup> Another definition is "splicing of a tissue, cell or organ from one place to another"<sup>78</sup> "The procedure of carrying an organ or alive fleshy tissue and instilling it in another part of the body"<sup>79</sup>

## 1.5 Process of Transplantation

Transplantation is a medical procedure that includes removing an organ from a body and placing it into the body of the recipient. The recipient's organ is either damaged, missing, or destroyed, and it is not performing the tasks of the body. Donors and recipients may be in the same region or locality for the entire transplant operation, or the organ may be relocated for transplantation.

Kidneys, liver, lungs, and heart are among the organs that can be delivered. The cornea, bone marrow, skin, valves, nerves, blood vessels, ligaments, and other body parts are all considered flesh. Patients with a wide range of diseases and traumas benefit from tissue transplantation because it restores their confidence, strength, and sometimes even sight.

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<sup>76</sup> P. Pauler, "Sybil P. Parker (Ed.), *Mc Graw, Hill Dictionary of Scientific and Technical Terms*, 3rd Ed., Vol. Crystal Research and Technology 21, No. 4 (New York: Mc Graw Hill Book Co, 1984), 476–476, <https://doi.org/10.1002/Crat.2170210408>.

<sup>77</sup> J. Mersand, Anna L, and Eckersley-Johnson, "*Book Reviews: Webster's Secretarial Handbook*., 4th Ed., Vol. 14 (Springfield, Massachusetts: (Ed). G. & C. Merriam Company, 1976), 81–82, <https://doi.org/10.1177/002194367701400422>

<sup>78</sup> Simon McGurk, '*Black's Medical Dictionary – 42nd Edition* Harvey Marcovitch Black's Medical Dictionary – 42nd Edition(Ed)A&c Black784pp£3097807136890200713689021,' *Nursing Standard* 24, No. 29 (March 24, 2010): 31–31, <https://doi.org/10.7748/Ns.24.29.31.S38>

<sup>79</sup> Elizabeth a Martin, *Concise Colour Medical Dictionary* (Oxford: Oxford University Press, Cop, 2015).

## 1.6 Classification of Transplantation

There are several different types of transplantation, which can be classified based on various factors such as the source of the donated tissue or organ, the degree of matching required between the donor and recipient, and the level of immunosuppression needed to prevent rejection.

### 1.6.1 Auto graft or Auto Transplantation

The transplantation of organs or flesh from one part/portion of the body to another in the same person is known as auto graft transplantation.<sup>80</sup> Auto is a Greek word that means “self”. Auto graft or auto transplantation refers to autologous flesh transplantation using this approach.<sup>81</sup> For example, a fragment of bone from the hip is mashed into a paste to be used in the reconstruction of another bone. As a result, an auto graft is a transfer of flesh from one person to another. Skin grafts and vein removal, among other procedures, are usually done with leftover tissue that can recover.

### 1.6.2 Allograft or Allo Transplantation

Allograft genetically includes non-identical donors flesh or organs to the recipient of the same species.<sup>82</sup> Allo is a Greek word that signifies "other." Allograft transplantation, homografts, or allogeneic transplantation are terms used to describe this type of transplantation.<sup>83</sup> When it comes to transplantation, allografts are classified as "homeostatic," meaning they are biologically inactive, i.e. cartilage and bone.<sup>84</sup> An allograft is an inherited organ or tissue transplantation between two members of the same species. Human tissue and organ transplants are the most common allografts. Because of genetic differences between

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<sup>80</sup> Joris J. Harlaar and Martijn P. Gosselink, 'Blood Transfusions and Prognosis in Colorectal Cancer,' *Annals of Surgery* 256, No. 5 (November 2012): 681–87, <https://doi.org/10.1097/SLA.0b013e318271cedf>,

<sup>81</sup> Ibid

<sup>82</sup> R. Twombly, "Plans, and Champions, Needed to Control Growing World Cancer Burden" (JNCI Journal of the National Cancer Institute, April 30, 2007), <https://doi.org/10.1093/jnci/djk192>.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

donors and recipients, the recipient's immune system may reject the organ, causing the transplantation surgery to fail. Estimating the quantity of responsive immune response in the panel can be used to determine the likelihood of transplantation rejection. Pathological testing and the risk of communicable illnesses such as Hepatitis B, C, or HIV are performed on organs or tissue taken from living or deceased donors.

### 1.6.3 Iso Graft

It is a type of allograft in which an organ or tissue is transplanted by a receiver who is indistinguishable from the donors (e.g., the same twin). Isografts are distinguished from other types of transplants by the fact that they do not produce an immune response and are physically identical to allografts.<sup>85</sup>

### 1.6.4 Xeno Transplantation or Xenograft

This form of transplantation is transplantation from person to person by organ or tissue, which is also known as heterologous transplantation.<sup>86</sup> The Greek term Xeno implies "foreign" or "strange." Human Xenotransplantation is a surgery that is used to treat post-stage organ failure, and it is commonly used in underdeveloped countries. This raised severe social, legal, and medical issues as well. For example, piscine primate (fish to non-human primate) tissue, such as pancreas or isolated tissue, was created with the goal of laying the groundwork for future human use.<sup>87</sup> Xenotransplantation is frequently an extremely risky procedure due to the increased risk of non-identity, rejection, and disease transmission in the tissue.<sup>88</sup> Due to a scarcity of donated organs, xeno splicing has been used in the field of transplantation for millennia. Because the presence of infectious agents in donors was already successful in

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<sup>85</sup> Maria Z. Siemionow, Yalcin Kulahci, and Mehmet Bozkurt, "Composite Tissue Allo transplantation," *Plastic and Reconstructive Surgery* 124 (December 2009): e327–39, <https://doi.org/10.1097/prs.0b013e3181bf8413>.

<sup>86</sup> M Fox, "Xenotransplantation: The Ethical and Legal Ramifications," *Medical Law Review* 6, no. 1 (March 1998): 42–61, <https://doi.org/10.1093/medlaw/6.1.42>.

<sup>87</sup> Keith Reemtsma, "Xenotransplantation: A Historical Perspective," *ILAR Journal* 37, no. 1 (January 1, 1995): 9–12, <https://doi.org/10.1093/ilar.37.1.9>.

<sup>88</sup> David K. C. Cooper, "A Brief History of Cross-Species Organ Transplantation," *Baylor University Medical Centre Proceedings* 25, no. 1 (January 2012): 49–57, <https://doi.org/10.1080/08998280.2012.11928783>.

practise in the seventeenth century due to the transfusion of blood between humans and animals, this practise was promptly prohibited.<sup>89</sup> In the early 19th century, Xenotransplantation was carried on sheep, rabbits, chickens, pigeons, and frogs which were most successful among the sources.<sup>90</sup> Hitchcock replaced the baboon kidney with a human kidney in 1963. After three days, the transplanted kidney failed. Baboons have had good results, although denial was still a factor in the botched organ later on.<sup>91</sup>

### 1.6.5 Domino Transplantation

It is also a safer process with a higher degree of achievement to substitute the recipient's heart and lungs with those of the donors for patients with cystic fibrosis, where both lungs need transplantation. If the recipients' heart is in good working order, it can be transplanted by another recipient who requires a heart transplant, leaving the actual cardiac donors to live with cystic fibrosis.<sup>92</sup> In 2016, a woman with cystic fibrosis was treated at Stanford Medical Centre for cystic fibrosis, which caused one lung to enlarge and the other to collapse along those lines to enclose her heart. A patient with proper ventricular dysplasia, which induced excessive speed, was also a patient. Three comprehensive operational teams were required, including one, to get the original donors out of the heart and lungs of the deceased. The two living donors made significant progress and were able to meet a month and a half after their initial visit.<sup>93</sup>

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<sup>89</sup> Ibid.

<sup>90</sup> David K. C. Cooper, "A History of Organ Transplantation: Ancient Legends to Modern Practice," *Xenotransplantation* 19, no. 6 (November 2012): 375–375, <https://doi.org/10.1111/xen.12013>.

<sup>91</sup> Allan R. Glanville, "Editorial," *Current Opinion in Organ Transplantation* 24, no. 3 (June 2019): 286–87, <https://doi.org/10.1097/mot.0000000000000644>

<sup>92</sup> M.H. Yacoub et al., "Analysis of 10-Year Experience with Heart-Lung Transplantation for Cystic Fibrosis," *Transplantation Proceedings* 29, no. 1–2 (February 1997): 632, [https://doi.org/10.1016/s0041-1345\(96\)00368-5](https://doi.org/10.1016/s0041-1345(96)00368-5)

<sup>93</sup> Wykes .Sara , "After Rare Procedure, Woman Can Hear Her Heart Beat in Another, Stanford Medicine News Centre, March 29, 2016.

## 1.6.6 ABO- Incompatible Transplantations

Children under the age of one, and sometimes as young as two, do not have a fully established immune system, they can receive organs from normally opposite donors, referred to as ABO-incompatible transplants.<sup>94</sup>

## 1.7 Definition of Organ Donation

While the donor is either alive or dead, an individual legally allows the removal and transplantation of his or her organs to someone else, either with his or her consent or with the consent of close relatives.<sup>95</sup> The donation might be made to assist someone who is in need of an organ, or it can be made for the sake of research or study. Kidneys, heart, liver, lungs, corneas, bone marrow, pancreas, and other organ transplants are among the most common. Some organ donations, such as kidney, bone marrow, a portion of the liver, and the pancreas, can be provided during one's lifetime, while others are made after death.<sup>96</sup>

### 1.7.1 Procedure Involving Organ Donation

Donation of organs by living donors is usually preceded by comprehensive testing, including a psychological examination to determine whether the potential donors recognise and consent to the donation. On the day of the donation, the donors and recipients arrive at the hospital, just as they would for any other major medical procedure. After treatment, a person's quality of life improves significantly to varied degrees. The heart, kidneys, liver, lungs, pancreas, skin, and thymus are among the organs that can be transplanted.<sup>97</sup> The kidneys are the most commonly transplanted organs worldwide, followed by the liver, bone

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<sup>94</sup> Kota Takahashi and Kazuhide Saito, "ABO-Incompatible Kidney Transplantation," *Transplantation Reviews* 27, no. 1 (January 2013): 1–8, <https://doi.org/10.1016/j.trre.2012.07.003>

<sup>95</sup> Amit Agrawal, "Social Marketing of Voluntary Blood Donation/Organ Donation," *Global Journal of Transfusion Medicine* 1, no. 2 (2016): 69, <https://doi.org/10.4103/2455-8893.189856>

<sup>96</sup> "Sixty-First Annual Meeting of the Health Physics Society," *Health Physics* 111 (July 2016): S1–115, <https://doi.org/10.1097/hp.0000000000000549>

<sup>97</sup> "Patients Waiting for Transplants, UNOS update, Jan. 1994, at 38.

marrow, and corneas.<sup>98</sup> People must understand that giving organs or tissue alters the life of the recipient.

For deceased donors, the procedure begins with a physical examination to ensure that the individual has unquestionably passed away; the individual's death is then validated by a Neuro expert (a doctor specialising in brain function). Nothing is usually done until a person's death has been confirmed. First, authorisation for donation is granted when simple restorative tests are completed without delay in order to assist in the identification of a potential recipient. To avoid experts ignoring any remaining evidence of life, official confirmation of death is issued frequently.<sup>99</sup> Following death confirmation, the hospital will place the body on a mechanical ventilator and employ various measures to keep the organs healthy.<sup>100</sup> Since the organs are extracted by a trained team, they are moved to the recipient as quickly as possible for transplantation. Because most organs only live for a few hours outside their bodies, receivers from similar areas are frequently chosen. After the transplanting organs are removed, the body is usually repaired so that the family can proceed with their funeral rights.

### **1.7.2 The Theoretical Framework on Procedures Involving Deceased Organ Donation**

The Theoretical Framework on Procedures Involving deceased organ donation can be structured using the Health Belief Model (HBM) and the Theory of Planned Behaviour (TPB).

The HBM emphasizes the role of attitudes, beliefs, and values in determining health-related behaviour,<sup>101</sup> while the TPB emphasizes the role of social norms and perceived

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<sup>98</sup> Ibid

<sup>99</sup> "Organ Donation: The Process". U.S. Department of Health and Human Services. Archived from the Original on July 27, 2016. Retrieved July 30, 2016.

<sup>100</sup> Katherine T. Forkin and Edward C. Nemergut, "Miller's Anesthesia, 8th Edition," *Anesthesiology* 124, no. 4 (April 2016): 977–78, <https://doi.org/10.1097/aln.0000000000001020>

<sup>101</sup> Ajzen I. The Theory of Planned Behavior. *Organ Behav Hum Decis Process.* (1991) 50:179–211. 10.1016/0749-5978(91)90020.

control over behaviour.<sup>102</sup> Both models can be useful in understanding the complex decision-making process involved in organ donation procedures.

The Health Belief Model (HBM) suggests that people will engage in health behaviours if they perceive that the behaviour will have a positive impact on their health, and if they believe that they are capable of carrying out the behaviour.<sup>103</sup> The HBM includes several components that may be relevant in the context of deceased organ donation procedures, including:<sup>104</sup>

- **Perceived susceptibility:** Individuals' perceptions of their own risk for needing deceased organ transplant or of the need for others to receive organ transplants.
- **Perceived severity:** The perceived severity of the health condition that requires deceased organ transplantation, and the perceived benefits of deceased organ transplantation.
- **Perceived benefits:** The perceived benefits of donating organs, such as saving the life of a recipient or contributing to medical research.
- **Perceived barriers:** The perceived barriers to deceased organ donation, such as religious or cultural beliefs, lack of knowledge or trust in the medical system.
- **Cues to action:** The factors that prompt individuals to consider deceased organ donation, such as a family member's illness or a public service announcement.
- **Self-efficacy:** The belief in one's ability to carry out the behaviour of deceased organ donation.

The Theory of Planned Behaviour (TPB) suggests that people's attitudes, subjective norms, and perceived control over behaviour all contribute to the likelihood that they will

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<sup>102</sup> Rosenstock IM. The Health Belief Model and Preventive Health Behavior. *Health Educ Behav.* (1977) 2:3586. 10.1177/109019817400200405.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

engage in a particular behaviour. In the context of organ donation, the TPB might suggest that an individual's decision to donate organs is influenced by:<sup>105</sup>

- **Attitudes:** The individual's overall evaluation of organ donation, including beliefs about the importance and effectiveness of donation.
- **Subjective norms:** The individual's perceptions of social norms regarding organ donation, including the opinions of family members, friends, and the community.
- **Perceived behavioural control:** The individual's perception of their ability to donate organs from deceased, including factors such as the ease of the donation process, the availability of information and resources, and their own personal beliefs and values.

In addition to these models, the Stages of Change Model may also be relevant in understanding the decision-making process involved in deceased organ donation. This model suggests that individuals move through a series of stages as they consider a behaviour change, from pre-contemplation (not considering the behaviour change) to maintenance (sustaining the behaviour change over time).

Overall, a theoretical framework that incorporates the Health Belief Model, the Theory of Planned Behaviour, and the Stages of Change Model can provide a comprehensive understanding of the complex decision-making process involved in deceased organ donation procedures. By considering these factors, healthcare professionals and policymakers can design interventions that promote positive attitudes and behaviours towards deceased organ donation, address perceived barriers, and increase the number of successful donors.

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<sup>105</sup> Ajzen I. The Theory of Planned Behavior. *Organ Behav Hum Decis Process.* (1991) 50:179–211. 10.1016/0749-5978(91)90020

### 1.7.3 The Stages of Change Model

The Stages of Change Model also known as the Trans theoretical Model, is a theoretical framework that describes the process of behaviour change.<sup>106</sup> It posits that individuals move through a series of stages as they consider a behaviour change, from pre-contemplation (not considering the behaviour change) to maintenance (sustaining the behaviour change over time). This model has been applied to various health-related behaviours, including organ donation.<sup>107</sup> When evaluating the Stages of Change Model in the context of deceased organ donation, there are several strengths and limitations to consider:

#### 1.7.4 Strengths of Stages of Change Model

- **Provides a structured approach:** The model provides a structured approach to understanding the behaviour change process, which can be helpful for healthcare professionals and policymakers in designing interventions that target specific stages.
- **Allows for personalized interventions:** By understanding where an individual is in the behaviour change process, healthcare professionals can tailor their interventions to the individual's specific needs and concerns.
- **Considers the complexity of behaviour change:** The model recognizes that behaviour change is a complex process that involves multiple stages and factors, which can be influenced by a variety of personal, social, and environmental factors.

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<sup>106</sup> Kraft, P., Sutton, S., & Reynolds, H. *The Trans theoretical Model of Behaviour Change: Are the Stages Qualitatively Different?* *Psychology and Health*, (1999).14, 433-450.”

<sup>107</sup> Ibid.

### 1.7.5 Limitations of Stages of Change Model

- **Limited applicability:** The model may not be applicable to all individuals or contexts, as some people may not fit neatly into the defined stages or may experience multiple stages simultaneously.
- **Assumes linear progression:** The model assumes that individual's progress through the stages in a linear fashion, which may not always be the case. Individuals may cycle through the stages multiple times, and the process of behaviour change may not always follow a predictable path.
- **Does not account for external factors:** The model focuses primarily on individual factors that influence behaviour change, and does not take into account external factors such as societal attitudes towards organ donation or the availability of resources.
- **May oversimplify behaviour change:** The model may oversimplify the complex nature of behaviour change, particularly in the context of organ donation. The decision to donate organs after death can be influenced by a range of personal, cultural, and religious factors, which may not be captured by the model.

In nutshell, while the Stages of Change Model can be a useful framework for understanding behaviour change in the context of deceased organ donation, it is not without its limitations. Healthcare professionals and policymakers should be aware of these limitations when designing interventions to promote deceased organ donation and consider other theoretical frameworks alongside the Stages of Change Model to provide a more comprehensive understanding of the behaviour change process.

## 1.7.6 Types of Organ Donation

Organ donors can be divided into two categories i.e. living organ donors and deceased organ donors.

### (a) Living Donors

Living organ donors are persons who offer their renewable organs, flesh, and cells, among other things, while still living. These organs and flesh can be regrown following donation. While the donor is still alive, an organ in which the remaining organ may sustain the burden of the remainder of the body, primarily a single kidney donation, partial liver or lung lobe donation, and bone marrow donation.<sup>108</sup>

### (b) Deceased Organ Donation

An individual whose death has been confirmed has his or her organs removed from the body by a medical expert team with previous approval in deceased organ donation. Those organs are then transplanted into other persons who are dying of organ failure.<sup>109</sup> It is a well-established therapeutic approach that is also recognised as a meaningful gesture of charity. It is a life-saving gift for individuals who have no other choice but to die of organ failure.

Deceased organ donation refers to the process of retrieving organs from a person who has died, for the purpose of transplantation into another person. It is a life-saving and life-enhancing medical procedure that has helped many people overcome serious health problems.<sup>110</sup>

When a person dies, certain organs can be harvested for transplantation if they are deemed to be suitable. The most commonly donated organs include the heart, lungs, kidneys, liver, pancreas, and small intestine. Tissues such as corneas, skin, bones, and heart valves can

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<sup>108</sup> Ibid.

<sup>109</sup> Lisa Anderson, "Death, Dying, and Organ Transplantation," *Critical Care Medicine* 40, no. 10 (October 2012): 2929.

<sup>110</sup> Lisa Anderson, "Death, Dying, and Organ Transplantation," *Critical Care Medicine* 40, no. 10 (October 2012): 2929.

also be donated. The decision to donate organs is typically made by the deceased person's surviving family members or by the donor while they were still alive.<sup>111</sup> To make sure that a person's wishes are respected, it is crucial to have candid conversations about organ donation.

Understanding the ethical and legal ramifications of organ donation is important because it is a complicated and sensitive topic. It's crucial to realise that donations can only be made after all attempts to save the person's life have failed and they have been pronounced dead. The decision to donate organs is usually made by the next of kin of the deceased person or by the person themselves while they were still alive. It is important to have open and honest discussions about organ donation to ensure that a person's wishes are respected.<sup>112</sup>

Organ donation is a complex and sensitive issue, and it is important to understand the ethical and legal aspects involved. It is also important to understand that donation can only take place after all life-saving efforts have been exhausted and the person is declared dead.

Deceased organ donation is a noble and selfless act that can help save the lives of others and improve their quality of life.

## **1.8 Organ Trafficking**

The Istanbul Declaration of 2008 was the first agreement to address the issue of organ trafficking. Organ trafficking, according to the declaration, is defined as "The recruitment, transportation, transfer, sheltering, or receiving from existing or deceased individuals or their organs by threatening or exercising power or other means of terrorization, abduction, deception, treachery, misappropriation of power or feebleness, or by granting or obtaining from a third party disbursements or paybacks to carry out the handover of authority or control of prospective donors for taking a life."<sup>113</sup> Organ trafficking is becoming more popular

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<sup>111</sup> Ibid.

<sup>112</sup> Steck, Christopher. "Islamic Biomedical Ethics: Principles and Application" Oxford University Press, 2009," *The Heythrop Journal* 53, no. 5 (August 8, 2012): 852–53. <https://doi.org/>

<sup>113</sup> "The Declaration of Istanbul 2008 He Declaration Is Promoted, Implemented and Upheld by the Declaration of Istanbul Custodian Group and Endorsed by the World Health Organization."

around the world. Agents, doctors, and hospitals engaging in the illegal industry have been linked in a slew of high-profile media stories.

Organ trafficking is quite widespread in nations like Pakistan, China, India, Indonesia, and Brazil, and documented cases have been found in many other places throughout the world.<sup>114</sup> Kidney transplantation is in high demand all across the world, there are currently 123,000 men, women, and children on the organ donation waiting list.<sup>115</sup> Every day, an estimated twenty-five people die.<sup>116</sup> As a result, there's a huge hurry to find organs, whether legitimate or not. In 2010, more than 11,000 human organs were purchased on the illicit market, according to the World Health Organization.<sup>117</sup>

According to the World Health Organization, human organ trafficking occurs every hour of every day of the year.<sup>118</sup> Human organs and tissue are unquestionably in high demand. According to WHO research, it is now simpler to do business with human organs that have been marginalized in the process of organ and tissue harvesting.<sup>119</sup>

It is not easy to address the issue of organ trafficking. Developing on the effort started by the World Health Organization to address these problems. The Istanbul Declaration against Organ Trafficking and Transplantation Tourism was created in 2008 by two major global professional bodies' organizations Transplantation Society and the International Society of Nephrology. The Declaration provides guidance on how to resist illegal organ transplantation methods. The Declaration contains various principles and recommendations aimed at assisting politicians and health professionals in the fight against organ trafficking,

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<sup>114</sup> Leslie P. Francis and John G. Francis, "Stateless Crimes, Legitimacy, and International Criminal Law: The Case of Organ Trafficking," *Criminal Law and Philosophy* 4, no. 3 (July 27, 2010): 283–95, <https://doi.org/10.1007/s11572-010-9100-y>

<sup>115</sup> Ibid

<sup>116</sup> Ibid

<sup>117</sup> J. Sandor, "Improving the Effectiveness of the Organ Trade Prohibition in Europe." The EULOD Project 2012.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

transplantation tourism, and commercialism, as well as fostering ethical donation and transplantation practises.<sup>120</sup>

Organ trafficking is also described in the Council of West's new proposed Convention against Trafficking in Human Organs. This Convention was first introduced in the year 2014.<sup>121</sup>

Trafficking of human organs according to this current convention is one of the following practices when intentionally carried out:<sup>122</sup>

- (a) Removal of male organs from living or departed donors without free, informed, or clear consent from live or deceased donors, or, in the event of deceased donors, without authorization under its own law of elimination;<sup>123</sup>
- (b) Use of these organs for transplantation or for purposes other than transplantation.<sup>124</sup>
- (c) Organizing, storing, transporting, transferring, acquiring, importing, and exporting organs.<sup>125</sup>
- (d) Abetting or aiding the execution of any of these criminal offenses or the deliberate attempt to commit any of those offenses;<sup>126</sup>
- (e) Application and recruitment of an organ giver or receiver for financial gain or equivalent value to a person who finds either a recruiter or a third party;<sup>127</sup>
- (f) Give any health professional, government official, or individual an unfair advantage, directly or indirectly, in any position, to direct or benefit private

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<sup>120</sup> "Declaration of Istanbul on Organ Trafficking and Transplant Tourism, Ed: 2018."

<sup>121</sup> "Council of Europe Convention against Trafficking in Human Organs,2014"

<sup>122</sup> Ibid.

<sup>123</sup> Council of Europe Convention against Trafficking in Human Organs,2014"

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

organisations for deportation or expulsion. embedding of a human organ where the above-mentioned exclusion or embedding is illegal;<sup>128</sup>

- (g) A request or receipt of any unfair benefit, in any capacity, by healthcare practitioners, their public officials, or persons directing or working for private sector body organisations to perform or promote the removal or implantation of human organs where such removal or implantation is illegal as described above.<sup>129</sup>

## **1.9 Exploring the Ethics and Implications of Organ Sale, Transplant Tourism and Organ Business: A Deep Dive into a Controversial Practice**

The only country with a functioning and legal payment system for organ sales is Iran. Organ sales are not prohibited in Iran, which has resulted in the abolition of organ scarcity.<sup>130</sup> Furthermore in Iran, if a patient has no immediate relative or is not designated by deceased donors, the dialysis and transplantation refer to the non-profit. Potential donors are recognized by the Association and tested by transplantation physicians who are not affiliated with the organisation. The government is providing donors with \$1,200 in cash and assisting them with a year of limited health benefits. Moreover, kidney recipients who work with the organisation pay between \$2,300 and \$4,500 to donors. Importantly Obtaining payment from the medical and surgical teams involved, or from any middleman, is unethical.<sup>131</sup> According to the World Health Organization (WHO), illegal organ trade occurs when organs are removed from the body for commercial purposes.<sup>132</sup> "Paying for organs is likely to take

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<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> Ahad J. Ghods and Shekoufeh Savaj, "Iranian Model of Paid and Regulated Living-Unrelated Kidney Donation," *Clinical Journal of the American Society of Nephrology* 1, no. 6 (October 11, 2006): 1136–45, <https://doi.org/10.2215/cjn.00700206>.

<sup>131</sup> Ibid.

<sup>132</sup> Tazeen H. Jafar, "Organ Trafficking: Global Solutions for a Global Problem," *American Journal of Kidney Diseases* 54, no. 6 (December 2009): 1145–57, <https://doi.org/10.1053/j.ajkd.2009.08.014>

unfair advantage of the poorest and most vulnerable people, impair selfless donations, lead to profit-making, and the organs business," according to the World Health Organization.<sup>133</sup> Despite bans on organ sales, it was estimated that 5% of all organ recipients were involved in commercial organ transplants in 2005.<sup>134</sup> Illegal organ trafficking is on the rise, according to research, with a recent Global Financial Integrity report predicting that illegal organ trafficking produces an annual income of between 600 and 1.2 billion dollars, spanning numerous nations.<sup>135</sup> Donations for reasons are rendered to individuals whose beneficiaries cannot pay

"Organ tourism," according to the World Health Organization, refers to patients who go across borders to have their organs transplanted elsewhere.<sup>136</sup> People travel for transplantation either because the procedure is not available in their home country or because there are insufficient organs available in their home country.

There are two scenarios in which tourism is transplanted;

- (a) Long waiting lists in developed countries,
- (b) In developing countries where there is no rule governing the purchase and sale of kidneys, poor people make money by selling their organs.
- (c) Since the Istanbul declaration, the transplantation business has become difficult, if not impossible, in some regions, and the necessity for an organ has led to an alternate solution, particularly the allure of organ trafficking and transplantation tourism. Buying kidneys and receiving organ transplants from travellers travelling overseas, also known as "transplantation tourism," is one

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<sup>133</sup> F. Ambagtsheer and W. Weimar, "A Criminological Perspective: Why Prohibition of Organ Trade Is Not Effective and How the Declaration of Istanbul Can Move Forward," *American Journal of Transplantation* 12, no. 3 (December 7, 2011): 571–75, <https://doi.org/10.1111/j.1600-6143.2011.03864.x>.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Yosuke Shimazono, "The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information," *Bulletin of the World Health Organization* 85, no. 12 (December 1, 2007): 955–62, <https://doi.org/10.2471/blt.06.039370>.

of the most popular ways to exchange organs across national lines. The definition of tourism is hazy and imprecise.

Transplantation in a foreign country, where a person obtains an organ through organ trafficking or other means, can take many different forms.<sup>137</sup> In some circumstances, beneficiaries and contributors from various countries relocate to a third country that violates their home country's legal structure. To overcome these difficulties, the notion was spread throughout the world with an open justification for purchasing an organ from a deceased benefactor. The law prohibits the sale of organs from residents to foreigners in some locations. Recently, a rather clever way for avoiding this stumbling block was discovered. This brings in people in good physical shape from the outside and has them practise their organs under the guise of an agreement.<sup>138</sup>

Organ trafficking is one of the most lucrative transnational crimes, with serious consequences for human welfare. The enterprise, which is also known as organ trafficking or trafficking in persons for the removal of organs, primarily entails moving individuals rather than harvested organs. Organs have become a commodity to be bought and sold illegally due to a severe scarcity of legally produced organs around the world. Illegal organ trade has far-reaching implications for individuals and civilizations all across the world.

The illegal organ trade is driven by despair and greed. Both the receiver and the vendor are hopeless: without transplantation, the recipient will die; the vendor seeks debt relief or poverty alleviation.<sup>139</sup> Despite the fact that they both break the law, neither has the

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<sup>137</sup> Ibid.

<sup>138</sup> O.S.Surman et al., "The Market of Human Organs: A Window into a Poorly Understood Global Business," *Transplantation Proceedings* 40, no. 2 (March 2008): 491–93, <https://doi.org/10.1016/j.transproceed.2008.02.019>

<sup>139</sup> The use of the word "vendor" doesn't necessarily mean that the person delivered or paid for the organ freely or without coercion.

image of a normal criminal.<sup>140</sup> Brokers and scouts, on the other hand, genuinely embody "man's inhumanity to man" in their efforts to profit off the pain of others.<sup>141</sup>

Transplantation tourism not only includes the sale and purchase of organs but also other forms of commercialization of organ transplantation.<sup>142</sup> The most common way of trading organs across national borders is through potential recipients traveling abroad for organ transplantation, commonly referred to as "transplantation tourism." Potential recipients' foreign movement is frequently coordinated or supported by intercessors and well-being up keeper body organizations that plan travel and recruit donors.<sup>143</sup> Nonetheless, business in transplantation-related health services across borders that result in the inequitable distribution of deceased donors organs and has also raised ethical concerns, particularly when this occurs in a country where the regulatory mechanisms for protecting live organ donors from coercion, abuse, and physical harm are not well established or put into action. It is, nevertheless, applicable to overseas transplantation under WHA Resolution 57.18 and in international health policy debates where a patient has acquired an organ through a business or other methods that is in violation of national regulatory systems. India has been striving to minimise illegal trade within its borders, with an increasing number of transplantation tourists flocking to Pakistan, which had become a popular transplantation tourism destination by 2005.<sup>144</sup>

Obtaining an organ or for transplantation occurs in both developed and developing countries, creating in a transplant tourism industry. Several people with end-stage limb illness do not want to wait years for treatment. India, Pakistan, Taiwan, China, the Philippines, and South America are the most popular destinations for transplantation tourism. According to a

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<sup>140</sup> Ric Esther Bienstock, "*Tales from the Organ Trade, Documentary.*" (HBO, 2013).

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> S. A.H. Rizvi et al., "Struggle for the Historic Unanimous Passage of Transplant Law in Pakistan," *Transplantation Journal* 90 (July 2010): 212, <https://doi.org/10.1097/00007890-201007272-00403>.

survey of 165 Saudi Arabian patients, the majority of transplantation tourists carried their kidneys to Pakistan (49%) followed by the Philippines (28%) Egypt (11%) and the United States (3.2%), China and Iran (2), and Lebanon, Jordan, and Syria (1). (1 percent each).<sup>145</sup>

### **1.10 The Criticism of Organ Trafficking, Transplantation Tourism, and Commercialism**

Internationally, organ trade is prohibited. The WHO prohibited organ trade and exchange in 1987, citing that the activity is inconsistent with basic human values and breaches the UNDP.<sup>146</sup> 'Organs should be freely donated, without any financial compensation or The United Nations Protocol on the Prevention, Suppression, and Punishment payment or any other monetary value or reward,' according to its guiding principles on human cell, flesh, and organ transplantation, referred to as Guidance Principles.<sup>147</sup>

Ratifying the United Nations Convention against Transnational Organized Crime (UNTOC) (also known as the Palermo Protocol) was the first international global legitimate instrument to recognise and prohibit trafficking in human beings, particularly women and children, for the purpose of extracting and harvesting human organs, commonly referred to as organ trafficking.<sup>148</sup>

Organ trafficking is regarded as a type of organisational crime in this context, and it is defined in the same way as people trafficking. This provision does not rule out the possibility of financial or other incentives for organ sales. Human trafficking is a major factor, involving exploitation, compulsion, assault, and abuse, among other things.<sup>149</sup> Despite the fact that UNTOC considers human organ trafficking to be a form of organised crime, WHO guidelines

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<sup>145</sup> James S. Taylor, "A Review of: 'Mark J. Cherry. 2005. Kidney for Sale by Owner: Human Organs, Transplantation, and the Market,'" *The American Journal of Bioethics* 5, no. 6 (November 2005): 71–72, <https://doi.org/10.1080/15265160500320569>.

<sup>146</sup> "World Health Assembly Resolution, "Development of Guiding Principles."

<sup>147</sup> "Additional Protocol to the Convention on Human Rights and Biomedicine, on Transplantation of Organs and Tissues of Human Origin,' Articles 21 and 22.

<sup>148</sup> "United Nations, "Protocol to prevent," Article 3.'

<sup>149</sup> Ibid.

highlight the prohibition of financial gain (often transplantation business). Other organisations, such as the Council of the West, distinguish between commercialism and trafficking.<sup>150</sup>

Organ commercialization and sale are highly opposed by registered transplantation societies. The Transplantation Society and the International Nephrology Society convened in Istanbul in 2008 to produce the "Istanbul Declaration on Organ Trafficking and Transplantation Tourism," which is the first comprehensive document written by transplantation experts worldwide against transplantation tourism. Transplantation tourism is defined as transplantation travel involving human trafficking and/or transplantation, in which a country's ability to provide transplantation services to its citizens is harmed by resources (organs, practitioners, and transplantation centres) used to provide transplantation to people from other countries.<sup>151</sup> Given its non-binding nature, DOI has a significant impact. It is supported by more than 100 transplantation organisations.<sup>152</sup> Several academic experts and clinicians, in addition to foreign groups and transplantation societies, have written about this crime.<sup>153</sup>

Scheper-Hughes,<sup>154</sup> questions how the body is viewed as an element and a "commodity" in today's global capitalist system, or as stolen indivisible and disposable components. Poor countries are exploited as the main supply of organs for rich sick human tourists for their organs,<sup>155</sup> argues Prof. Delmonico, President of the Substitute Society and one of the DOI's founders. In recent years, these and other authors have played a vital role in

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<sup>150</sup> "Additional Protocol to the Convention on Human Rights and Biomedicine, on Transplantation of Organs and Tissues of Human Origin,' Articles 21 and 22.

<sup>151</sup> "Steering Committee of the Istanbul Summit, "Transplant Tourism and Commercialism,"

<sup>152</sup> "Gabriel M. Danovitch and Mustafa Al-Mousawi, 'The Declaration of Istanbul—Early Impact and Future Potential,' *Nature Reviews Nephrology* 8, No. 6 (March 20, 2012): 358 <https://doi.org/10.1038/Nrneph.2012.59>,

<sup>153</sup> Ibid.

<sup>154</sup> Nancy Scheper-Hughes (born 1944 in New York City) is Chancellor's Emerita Professor of Anthropology. Her writings on anthropology of the body, hunger, illness, medicine, motherhood, psychiatry, psychosis, social suffering, violence and genocide, death squads, and human trafficking are well known.

<sup>155</sup> Nancy Scheper-Hughes, 'The Last Commodity: Post-Human Ethics and the Global Traffic in "Fresh" Organs,' in *Global Assemblages*, Aihwa Ong and Stephen Collier, Eds. London: Basil Blackwell., (2004).

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developing universal principles in organ donation and transplantation. Organ donation should be done out of altruism and respect for human dignity, with no financial gain or equivalent, and donors' consent should be voluntary and well-founded. The concept that giving is motivated by selflessness rather than money. The operation of selling, acquiring, or then expediting the commerce of human organs is prohibited because "the costs are reasonable and controllable." It's also against the law to publicise the need for or availability of organs in order to give or seek financial gain or a similar benefit. As a result of the condemnation of the organ trade and trafficking, practically all countries have enacted domestic legislation prohibiting it. Iran is the one exception to this rule. It permits commercial transplantation via a government-regulated system of organ procurement. Organ trafficking may not be as widely condemned as it may appear.

Evans<sup>156</sup> thinks that the ban on organ exchange is a product of Western ideology that has been applied incorrectly all over the world. He accuses recent anti-transplantation tourism declarations of being 'ethnocentric,' referring to the world exclusively through the lens of Western culture.<sup>157</sup> Critics of the organ trade as a major (organisations) crime concern are divisive for a variety of reasons. 'The grounds for criticism are not as evident as statements imply,' according to the Bellagio Task Force. As a result, there was no unarguable ethical theory that justified the restriction of organ sales in all circumstances.<sup>158</sup>

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<sup>156</sup> Is a social educationist and writer.

<sup>157</sup> R. W. Evans, "Ethnocentrism Is an Unacceptable Rationale for Health Care Policy: A Critique of Transplant Tourism Position Statements," *American Journal of Transplantation* 8, no. 6 (June 2008): 1089–95, <https://doi.org/10.1111/j.1600-6143.2008.02213.x>.

<sup>158</sup> D.J. Rothman et al., "The Bellagio Task Force Report on Transplantation, Bodily Integrity, and the International Traffic in Organs," *Transplantation Proceedings* 29, no. 6 (September 1997): 2739–45, [https://doi.org/10.1016/s0041-1345\(97\)00577-0](https://doi.org/10.1016/s0041-1345(97)00577-0).

In 1997, a group of doctors and philosophers published a paper in the *Lancet*, explaining why reasons widely proposed to ban organ sales are not working and arguing that 'the debate should be reopened'.<sup>159</sup>

The following are arguments against a blanket ban on the purchase and sale of organs. To safeguard those most inclined to sell, commercial transplantation and trafficking are prohibited. Scholars have debated whether there is something innately wrong with procuring and selling organs (commercialization), or whether what is wrong in practise are the circumstances under which it occurs and the unintended consequences.<sup>160</sup> They argue that the suffering caused to donors and recipients in the black marketplaces is sufficient evidence that the protection rationale is no longer viable.

"If a supply of desperately needed items is deemed unlawful, the risk of theft increases," Radcliffe-Richards stated. The argument is that a prohibition is not a barrier to victimisation. Banning and criminalising dealers, on the other hand, makes it more difficult to discover and help alleged victims. The justification for prohibition lacks empirical substance, implying that the organ price is invariably trafficable and thus unconvincing.<sup>161</sup> To justify prohibiting poor sellers from selling kidneys, Radcliffe-Richards,<sup>162</sup> claimed that it is required to show that organ trading is always adverse to their interests. Removing their option to sell renders them destitute and limits their options. Only by addressing the root causes of poverty and developing effective strategies to assist vulnerable donors can their situation be improved.<sup>163</sup>

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<sup>159</sup> A. Matas et al., "A Realistic Proposal-Incentives May Increase Donation-We Need Trials Now" *American Journal of Transplantation* 12, no. 7 (June 28, 2012): 1957–58, <https://doi.org/10.1111/j.1600-6143.2012.04117.x>.

<sup>160</sup> "Taylor, James. 'Why the "Black Market" Arguments against Legalizing Organ Sales Fail.' *Res Publish* 12, No. 2 (2006): 163–178,"

<sup>161</sup> Arthur J. Matas, "The Case for Living Kidney Sales: Rationale, Objections and Concerns," *American Journal of Transplantation* 4, no. 12 (December 2004): 2007–17, <https://doi.org/10.1111/j.1600-6143.2004.00664.x>.

<sup>162</sup> Is a bioethicist and feminist philosopher from the United Kingdom.

<sup>163</sup> J Radcliffe-Richards et al., "The Case for Allowing Kidney Sales," *The Lancet* 351, no. 9120 (June 1998): 1950–52, [https://doi.org/10.1016/s0140-6736\(97\)08211-1](https://doi.org/10.1016/s0140-6736(97)08211-1).

## 1.11 Economic and Social Injustice

Scheper-Hughes investigated organ marketing and smuggling in emerging countries, mainly in Eastern Europe and Brazil, and discovered reports about organ abduction. These stories begin in South and Central America and finally make their way to Russia and Poland in Eastern Europe. The body parts of these poor children are generally purchased by affluent Arabs for transplant operations. After further investigation, the main cause for organ harvesting in developing countries is the poorer's idea that their dead bodies are more valuable to affluent people than being alive?<sup>164</sup>

Based on biological and social facts, the allegations of poor individuals abducting organs and their bodies being more desirable to wealthier people. Organs are frequently transplanted from poor energetic youngsters to elderly, wealthy, and unattractive persons, according to further research in slums. The interchange between developing and developed countries occurs frequently.

People are scared and hesitant to transplant bodily organs as a result of commercialization, which has created a fear of medication among the general public body smuggling on the intercontinental frontier is well-known even among slum dwellers. Underprivileged people, according to Scheper-Hughes, illegal organ and blood trafficking that exists in their countries and on the global market. Finally, she saw several adverts in the Brazilian newspaper in which people freely sell their organs to others unless their government forbid its people harvest their organs to avoid paying debts in Brazilian hospitals, according to Scheper-Hughes. That was mentioned by her.

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<sup>164</sup> Scheper-Hughes, "*Theft of Life: The Globalization of Organ Stealing Rumours. Anthropology Today*", 12(3), 3 (1996). 11. n.d.

*“In routine medical encounters, poor people's bodies are mismanaged, disregarded, and harmed, according to the rumours. Poor people's remains are not only jumbled up and lost at the cemetery, making it impossible to respect the deceased in small Catholic rituals such as visitation, prayer, and devotion to the grave, but their bodies are also routinely mixed up and 'lost' in the city's public hospitals and clinics. Illiterate people with 'anonymous' or non-specific country names (such as Maria or Joao da Silva) are thought to be unknown or abandoned before they are even born. The bodies of those who die in hospitals are claimed by the state, which happens all too frequently.”<sup>165</sup>*

## **1.12 Conclusion**

In conclusion, the world is rapidly changing, and with new technologies and scientific advancements come new challenges and ethical issues. Deceased organ donation has been a significant success in medicine, but the scarcity of available organs has raised questions about fairness and transparency in their distribution. To ensure equitable access to medical treatment, we must find innovative solutions and promote distributive justice for all. This can be achieved by developing transparent and fair systems for organ distribution, educating the public about deceased organ donation, and investing in research to improve transplant outcomes and increase organ availability. As we continue to evolve, it is essential to remain grounded in our ethical values and principles to ensure that the benefits of scientific advancements are shared fairly and justly among all members of society.

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<sup>165</sup> Ibid.

## CHAPTER 2: THE LEGAL LANDSCAPE FOR DECEASED ORGAN DONATION: AN OVERVIEW OF HUMAN ORGAN AND TISSUE TRANSPLANTATION ACT OF 2010 and 2018 BILL.

### 2.1 Introduction

In Pakistan, the process of organ and tissues transplantation is regulated by The Organ and Tissues Transplant Act 2010 and 2018 bill, which have been enacted to establish a legal framework for the purpose of ensuring ethical and safe practices, and to prevent the exploitation of vulnerable individuals. This chapter explores what is the purpose and scope of The Organ and Tissues Transplant Act 2010 and 2018 bill in Pakistan and how they regulate the process of organ and tissues transplantation in the country? In the past, Pakistan has provided a favourable environment for organ trafficking: large numbers of poor people are willing to sell their kidneys; foreign patients flooded into Pakistan in 2003 due to a lack of government consideration and oversight.<sup>166</sup> Pakistan has become a favourite hub for organ transplantation due to its expert transplantation specialists and specialised private health facilities at private hospitals. Not only did transplant tourism thrive, but illegal organ trade and human organ trafficking also became commonplace. In 1991, relatives donated 75 percent of transplant kidneys to Pakistani families, but by 2003, 80 percent had come from unrelated donors.<sup>167</sup> In 2007, approximately two thousand commercial transplantations were performed in Pakistan each year, with about fifteen hundred being performed by foreigners.<sup>168</sup> Tourists from the United States, the West, and India came to have their organs transplanted. The Middle East, on the other hand, is the majority party.<sup>169</sup> Patients were predisposed by newspaper and Internet ads for 'transplantation packages' and received

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<sup>166</sup> Farhat Moazam, 'Families, Patients, and Physicians in Medical Decision Making: A Pakistani Perspective,' the Hastings Centre Report 30, No. 6 (November 2000): 28, <https://doi.org/10.2307/3528451>

<sup>167</sup> A. Efrat, "Combating the Kidney Commerce: Civil Society against Organ Trafficking in Pakistan and Israel," British Journal of Criminology 53, no. 5 (April 26, 2013): 764–83, <https://doi.org/10.1093/bjc/azt025>.

<sup>168</sup> Ibid.

<sup>169</sup> Farhat Moazam, 'Families, Patients, and Physicians in Medical Decision Making: A Pakistani Perspective,' the Hastings Centre Report 30, No. 6 (November 2000): 28, <https://doi.org/10.2307/3528451>,"

transplants at Punjab private hospitals, with prices ranging from \$10 million to \$40 million.<sup>170</sup> Donors from Pakistan include those from other organ exporting countries who pay among the poorest members of society. Many farm workers make \$1 or less per day. Because of the low wages, workers are frequently forced to borrow money from their landlords and accumulate debt that is difficult to repay.<sup>171</sup>

The 4th of September, 2007, was a landmark day in Pakistani history. The Human Organs and Tissue Transplantation Order 2007 was issued roughly after five years.<sup>172</sup> The majority of people applauded this development, which helped Pakistan join a group of countries that value and respect human dignity. Several people doubted that the legislation would change, and that Pakistan would continue to be a hotspot for the infamous organ trade. On March 17, 2010, Pakistan's President signed the Organ Transplantation Act, which was enacted by Parliament as the Human Organ and Tissue Transplantation Act, 2010.<sup>173</sup> The bill was unanimously adopted by the two legislators, the National Assembly and the Senate. The Act imposes a number of restrictions, including restricting organ donation to blood relatives over the age of 18 and prohibiting donations from strangers. Any donation must be reviewed by a committee of medical experts to ensure that it is entirely voluntary, according to this law.<sup>174</sup> Anyone found guilty of being involved in the organ trade faces a ten-year prison sentence under the act.<sup>175</sup> The government of Pakistan and the Human Organ Transplantation Authority (HOTA) are dedicated to upholding human dignity and combating organ trafficking.

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<sup>170</sup> Ibid.

<sup>171</sup> Javaad Zargooshi, "Iranian Kidney Donors: Motivations and Relations with Recipients," *Journal of Urology* 165, no. 2 (February 2001): 386–92, <https://doi.org/10.1097/00005392-200102000-00008>.

<sup>172</sup> Khan MI, "Transplant Ordinance Discourages Kidney Donors". The Post 27 March 2008.

<sup>173</sup> "'Human Organ Transplant Authority Protocol/Guidelines for Stem Cell Research/Regulation in Pakistan in Collaboration with the National Bioethics Committee, Pakistan,'

<sup>174</sup> Ibid.

<sup>175</sup> Ibid.

## 2.2 An Overview of the Human Organ and Tissue Transplantation Act of 2010

Indeed, the act aims to prohibit the sale of organs to foreigners and allows for the voluntary donation of organs or flesh to any other genetically and legally related individual, related relative, i.e. parent, mother, daughter, sister, brother, and spouse, as long as the donation is approved by the Field Specialist Assessment Committee, which was assisted by local officials in the establishment of each medical institution and hospital. The "Human Organ and Tissue Transplantation Act, 2010" was passed by the National Assembly in an attempt to put a stop to the practise.<sup>176</sup> The purpose of the Act is to prohibit the illegal sale of organs, which is common in many parts of the world, while also enforcing other restrictions, such as limiting the age of donors and having medical experts review voluntary donations. The Act was approved under Pakistan's signature on the Universal Declaration of Human Rights. Conformity with Article 3 of the UDHR is demonstrated by enacting the law, which asserts that a person has the right to life, liberty, and protection<sup>177</sup>and, more specifically, Article 25, which guarantees the right to health and well-being as well as an adequate standard of living;<sup>178</sup>It was done, but at the expense of severely infringing on fundamental personal rights. The idea behind living organ donation is that the wealthy get the kidney, the poor get the money, and everyone is satisfied by the medical procedure. Despite this, the practise has struggled to reduce poverty due to the heinous business that has arisen from it, and it leaves donors worse off, medically helpless as a result of sub-standard treatment.

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<sup>176</sup> "The Transplantation of Human Organs and Tissues Act 2010, Available [www.Na.Gov.Pk/Uploads/Documents/1479810285\\_726](http://www.Na.Gov.Pk/Uploads/Documents/1479810285_726) (Accessed on 4th January 2020).

<sup>177</sup> "Universal Declaration on Human Rights UDHR," Article 3 (1994), <https://www.un.org/En/Universal-Declaration-Human-Rights/>.

<sup>178</sup> "Universal Declaration on Human Rights UDHR,' Article 25 (1994), <https://www.un.org/En/Universal-Declaration-Human-Rights/>.

Despite legislative efforts to curtail the industry, organ trafficking and its resurgence have remained unaddressed since 2011,<sup>179</sup> through transplantation, arbitrary trade transplants of locals and foreigners were prohibited. Living donors who are "first-degree" relatives and legally related were allowed to donate. If no other donors are available, a "non-first graduate relative" will donate after approval by an assessment committee. The act established a human organ donation authority tasked with locating and recognising transplantation centres. —Two prominent members of the community, as well as medical professionals, must serve on the Center's evaluation committee. Each of the four provinces must have a provincial supervisory authority that audits and monitors transplantation records at audit centres across the province on a regular basis. All transplants must be submitted to the National Monitoring Authority, which must also be a member of the National Registry. Transplants must be documented within 48 hours by presenting recipient and donor information, copies of their national identification cards, the relationship of the Hospital Monitoring Authority Chairperson, and signatures.<sup>180</sup>

### **2.3 Reasons for the Law's Enactment**

Since the beginning of 1973, when renal transplantation surgery became popular in Pakistan, the unethical practise of organ transplantation has been a constant problem before the law.<sup>181</sup> Commercial kidney transplants have occurred in a number of other Pakistani institutions, with kidneys sold online. In early 2005, an Internet search for "Renal Transplantation in Pakistan" yielded over 800,000 results.<sup>182</sup> Kidney transplantation in Pakistan, as well as historical events that have helped to combat organ trafficking and pass

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<sup>179</sup> Khan MI, "Transplant Ordinance Discourages Kidney Donors". The Post 27 March 2008.' 2008.

<sup>180</sup> "The Transplantation of Human Organs and Tissues Act 2010, Available at [www.Na.Gov.Pk/Uploads/Documents/1479810285\\_726](http://www.Na.Gov.Pk/Uploads/Documents/1479810285_726) (Accessed on 4th January 2020).

<sup>181</sup> Khan MI, *Transplant Ordinance Discourages Kidney Donors*, The Post,

<sup>182</sup> Ibid.

successful legislation, have played a significant role. The principal factors for enacting the law were:

- (a) To bring an end to the country's illegal organ trade.
- (b) Stop illegally selling human organs from Pakistani nationals to foreigners.
- (c) To raise the standard of transplantation.
- (d) To save the lives of those who were being killed for the purpose of organ harvesting.
- (e) To establish rules and regulations for the procurement of human organs for medical purposes.

## **2.4 Suboptimal Legislation**

The Organ Transplantation Act has struggled to address fundamental issues such as determining the circumstances of death and the donation of the deceased organ in cases of brain death, which is vague and silent i.e. section 4 of the transplantation and human organs and tissue act 2010 prohibits individuals under the age of 18 from donating organs, leaving fundamental issues unaddressed i.e.

- (a) Children under the age of 18
- (b) Neurological Criteria for Death Determination

Section 4 of the transplantation and human organs and tissue act of 2010 states that anyone over the age of eighteen may donate their organs or tissues after death; however, donation for children is completely ignored. Because of the prescribed age factor and the use of neurological criteria to determine death, it appears to be more of a barrier to donation.

The main goal of this law is to make commercial transplantation illegal. It initially managed to keep it under control, but due to flaws in the system, the organ trade continues to

thrive, even among foreigners.<sup>183</sup> Given that Pakistanis have large extended families who typically live under one roof, it's surprising that this law excludes first cousins, uncles, aunts, and grandparents from the definition of blood relatives, reducing the recipient's chances of becoming a family donor.<sup>184</sup> Surprisingly, it involves a spouse as a 'blood relation' from whom the donation is legal.<sup>185</sup> It is fair to say that in Pakistan, a man can marry four wives at the same time and only have to pay a nominal maher when divorcing his wife. As a result, in a country where women's rights are practically non-existent, this provision has always been vulnerable to violence. According to reports, female donors are being used as spouses by receiving a backdated marriage certificate for donation purposes.<sup>186</sup> Following the completion of the donation process, a post-dated divorce certificate is easily obtained. While donations are made by first blood relatives or partners, the donors have always been women.<sup>187</sup>

Women wishes are mostly ignored or taken forgotten in Asian society, particularly in Pakistan. As a result, donations from female relatives should be treated with caution in this part of the world. There is a need to re-examine the ideology of altruism and coercion in the organ donation competition in general, and especially in third-world countries. There is a disadvantage to always accepting family donors as altruists. Despite extensive and detailed investigations to demonstrate that the donation is altruistic, an element of coercion will remain. True altruism can occur only when the donors bear no emotional or moral burden.<sup>188</sup>

Siblings, children, and partners may have a moral obligation and responsibility to donate rather than altruism, and it is critical to distinguish between the two. The situation in

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<sup>183</sup> M a Noorani, 'Commercial Transplantation in Pakistan and Its Effects on Western Countries,' *BMJ* 336, No. 7657 (June 12, 2008): 1378–1378, <https://doi.org/10.1136/Bmj.39559.489051.94.>,"

<sup>184</sup> Rizvi SAH et Al. "Commercial Transplants in Local Pakistanis from Vended Kidneys: A Socio-Economic and Outcome Study." *Transplant International*, 2010, 22(6):615–621.

<sup>185</sup> Ibid.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

<sup>188</sup> Jafar TH, 'Organ Trafficking: Global Solution for a Global Problem.' *American Journal of Kidney Diseases*, 2009, 54(6):1145–1157.

the Western world, on the other hand, is stark. The literacy rate is close to 100%, and people are aware of their rights.<sup>189</sup>

Everyone has the necessities of life, the states are stable, and the rule of law is supreme. Under these conditions, even the poor cannot be exploited for organ donation because they are protected by the government and, more importantly, the constitution. Decisions about organ donation are not considered unilateral; they are more relevant to the community because this is a family affair. Some families are hesitant to contribute, especially if their loved one's will is unknown.<sup>190</sup>

## **2.5 Exploring the Fundamental Right to Life: Perspectives on its Meaning, Scope, and Implications**

It examines the fundamental human right to life and the various ways in which it is viewed from the legal, moral, and religious standpoints. The idea of the right to life is fundamental to human society and has been enshrined in a wide range of laws and moral standards across the globe. The concept of the right to life is deeply rooted in human society and has been enshrined in numerous legal instruments and moral codes worldwide.

From a legal standpoint, the right to life is recognized as a fundamental human right in international human rights law, as well as in the constitutions of many countries. However, the meaning and scope of the right to life can vary depending on the specific legal framework and interpretation. For example, some legal systems may view the right to life as encompassing a broad range of rights, such as the right to health care and the right to a safe environment, while others may view it more narrowly as only protecting against intentional killing.<sup>191</sup>

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<sup>189</sup> Usmani AQ, "From Kidney Bazaar to Ethical Practices in Organ Transplantation." *Pakistan Journal of Medical Research*, 2007, 46(3):56.

<sup>190</sup> Ibid.

<sup>191</sup> Zhorne, Jeff, *Organ Transplants—How Far Dare We Go? The Plain Truth: A Magazine of Understanding*, 1985 50: 10–12, 14.

From a moral standpoint, the right to life is often seen as an inherent human right that cannot be taken away by any authority or individual. Many ethical theories, such as humanism and utilitarianism, also recognize the right to life as a central principle. However, there can be disagreements over how to balance the right to life against other competing values, such as individual autonomy and the greater good.<sup>192</sup>

From a religious standpoint, the right to life is often grounded in the belief that human life is sacred and should be protected. Many religious traditions, such as Christianity, Islam, and Judaism, recognize the right to life as a fundamental principle. However, there can be differences in how this principle is interpreted and applied in different contexts.

Overall, exploring the fundamental right to life from various perspectives can help to deepen our understanding of this essential human right and its implications. While there may be differing opinions on the meaning and scope of the right to life, it remains a crucial principle for protecting human dignity and ensuring that all individuals have the opportunity to live a full and meaningful life.

## **2.6 Understanding the Fundamental Right to Health**

"Fundamental Right to Health" explores the concept of health as a fundamental human right and the implications of this right for individuals and society as a whole. While the right to health is recognized in numerous international human rights instruments, the implementation of this right remains a challenge in many parts of the world.

From a legal standpoint, the right to health is recognized in various international human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights, as well as in the constitutions of many countries. The right to health includes not only

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<sup>192</sup> Ibid.

access to health care services but also the underlying social determinants of health, such as safe drinking water, adequate housing, and a healthy environment.<sup>193</sup>

However, despite the legal recognition of the right to health, the implementation of this right remains a challenge in many parts of the world. Many individuals, particularly those in low- and middle-income countries, lack access to basic health care services, including essential medicines, diagnostic tests, and medical equipment. Moreover, disparities in health outcomes persist across different populations, with marginalized and vulnerable communities often facing the highest burden of disease.

From a moral standpoint, the right to health is often seen as an essential component of human dignity and a basic requirement for leading a fulfilling life. Many ethical theories, such as the capability approach and the human development approach, also recognize the right to health as a central principle. However, there can be disagreements over how to balance the right to health against other competing values, such as individual autonomy and economic efficiency.

From a practical standpoint, the implementation of the right to health requires a comprehensive and integrated approach that addresses the underlying social determinants of health, as well as the provision of quality health care services. This requires a commitment from governments, as well as from the private sector and civil society, to invest in health systems and to ensure equitable access to health care services for all individuals, regardless of their socioeconomic status or geographic location.

The fundamental right to health is an essential component of human rights and human dignity. While the legal recognition of this right is a crucial step, its implementation remains a challenge in many parts of the world. Addressing this challenge requires a comprehensive

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<sup>193</sup> Kamali, Mohammad, "Fundamental Rights of the Individual: An Analysis of Haqq (Right) in Islamic Law," *The American Journal of Islamic Social Sciences* 10: 340–66.

and integrated approach that recognizes the interdependence of health with other social and economic factors and that prioritizes equitable access to quality health care services for all individuals.

## 2.7 Disparity between Law and Operation

Law enforcement is a difficult task that cannot be accomplished without the help of all stakeholders. Before late donations are operational, the Pakistani health system must face the challenge of contested organ trafficking temptations posing a significant risk to the lives of both donors and recipients, as these illicit activities will most likely take place in inappropriate circumstances endangering lives. As a result, new legislation relies on the government's and societies combined efforts to combat all potential legal violations.<sup>194</sup>

For organ transplantation self-sufficiency, Pakistani health professionals and associations should adhere to established practise standards and conduct live donor transplantations with the least amount of physical and psychological risk possible. It keeps public trust from being jeopardised, improves the health-care system's ability to operate efficiently while adhering to the law's requirements, and safeguards the industry's safety and ethics.<sup>195</sup>

Donation decisions should be made in an environment that allows potential donors to make their own decisions without fear of coercion or duress. Public education is needed in a number of areas, including ethical and Islamic perspectives on living organ donation in general and dead organ donation in particular in Pakistan.

In the absence of a deceased person's anticipated will, the legal heirs' right to substitute decision-making, and the State's role in unclaimed bodies, legislation may also apply to other types of living organ transplantation.

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<sup>194</sup> J. Harris, 'An Ethically Defensible Market in Organs,' *BMJ* 325, No. 7356 (July 20, 2002): 114–15, <https://doi.org/10.1136/Bmj.325.7356.114>.

<sup>195</sup> Syed Adibul Hasan Rizvi, Syed Ali Anwar Naqvi, 'Commercial Transplants in Local Pakistanis from Vended Kidneys: A Socio-Economic and Outcome Study,' *Transplant International* 22, No. 6 (June 2009): 615–21, <https://doi.org/10.1111/J.1432-2277.2009.00836.x>.

## **2.8 Bridging the Gap between Theory and Action**

Organ and tissue transplantation has succeeded in bringing life and death to the benefit of society. According to current research, organ transplants may be beneficial to society's health. The paradoxical scarcity of donated tissue, however, limits this possibility. The tremendous advancement in medical sciences that citizens receive from health-care organisations has necessitated the introduction of new approaches and state interventions for the benefit of society as a whole. Such progress will undoubtedly result in novel health services that are distinct from those that have previously been available in medical practise. The critical need for organ donation, which symbolises the transformation of death into life, necessitates the end of someone's life. As a result, the state and its citizens comprehend and accept the metaphor of "transforming death into life." The business must comprehend the significance of organ transplant protection systems. The significant differences in renal transplantation budgets from those of haemodialysis patients demonstrate this point.

To achieve that goal, people must recognise the urgent need for a solution to address the continued development of end-stage patients, as well as for our bodies to be a unique and irreplaceable source of well-being after death. For example, during or when people's legitimate organ donation is based on probability. Unfortunately, for decades, only a small percentage of these people were chosen.

## **2.9 Social and Legal Barriers to Deceased Organ Donation**

In Pakistani culture, removing an organ from deceased is regarded as an attack or disrespect. The body is necessary for the afterlife. This makes it more difficult for health workers to approach the deprived family and obtain permission to remove the organ.

The most common causes of this negative behaviour are ignorance and misinformation. The fear of mutilation is the fear of losing any part of our corporate structure, having our body's movement restricted, or losing an organ, a body part, or a natural

function. These ideas can lead to ethical and morally reprehensible behaviours when it comes to how we or our bodies are treated after we die. The family's decision to donate is influenced by these reflections on the preservation of the body's image.

Promoting the donation of dead organs necessitates a shift in attitudes among the general public and medical professionals, as well as an understanding that Confucian customs should be scrutinized through ongoing education and public awareness.

To improve normal organ transformation and eliminate negative connotations, there must be public awareness and open discussion. In this public debate, the religious, moral, and philosophical concerns of Pakistani students regarding organ donors who die before legislation are defined.

## **2.10 The Human and Organ Transplant Act 2010 Impacts on Pakistani Society**

The law pervades our lives, influencing both our actions and our sense of right and wrong in ways we are often unaware of. However, because the law has such a strong influence on culture, and because it has an internal logic expressed in decision-making, it has an external meaning that is influenced by social and historical factors. Despite the fact that the number of people involved in clandestine operations has been reduced by the transplantation act, the exploitation of the poor and related foreign trade transplants continues.<sup>196</sup> Shortly after the law was passed, a powerful commercial lobbyist launched a campaign against it, claiming that it was too restrictive and that patients died because organs from unrelated trade donors were insufficient.

The business lobby has moved to the Sharia Court. The Federal Sharia Court is a branch of Pakistan's Supreme Court that ensures that all laws in Pakistan comply with Islamic

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<sup>196</sup> Sharif S, 'Kidney Scam Victim Leads Police to Organ Traders. *Daily Times*. 12 July 2008. Available At: [Www.Dailytimes.Com.Pk/Default.Asp?Page=2008%5C07%5C12%5Cstory\\_12-7-2008](http://www.Dailytimes.Com.Pk/Default.Asp?Page=2008%5C07%5C12%5Cstory_12-7-2008). Pg13 (Accessed August 28, 2019).

law. The Pakistan Society of Transplant Physicists and Experts, which represents those involved in commercial transplants, has asked the Sharia Court to declare that certain provisions of the "Transplantation of Human Organs and Tissues Ordinance 2007" are in violation of Islamic law. The petitioners claimed that the law was restrictive and discriminatory because donations could only be made to blood relatives. Critics have also claimed that the law is racist because it prohibits the transplantation of Muslims from other countries.<sup>197</sup> The federal government's support for the law was represented by the administrator of the human organ transplantation agency. The Sharia Court rejected the petition after eight hearings in three Pakistani cities. "When human organs and transplants are sold or purchased for foreigners without a justified family donor," the Court stated, "this is in violation of the spirit of Islamic law."<sup>198</sup>

The mobilization of the national alliance, information access, media reporting, and the use of international standards and credibility as a weapon all had a huge impact on a society that had long accepted business in organs.

On the contrary, it is critical to recognize that, despite their poor implementation, Pakistan's constitutional reforms are still significant. As improvised clinics are relocated, the legislative ban in Pakistan has driven up prices and increased the risk of commercial transplants. In general, restrictions have resulted in a reduced, but not eliminated, organ trade. A thorough examination of the reasons for unspecified people's donation activity suggests that the new message to society was unable to positively influence this new social behaviour.

It is important to note that the public's attitudes toward organ donation today are not entirely consistent with UNESCO's concepts, which emphasize that society's cultural values for organs disregard social behavioural principles.<sup>199</sup>

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<sup>197</sup> Shariat Petition number 1/I 2008.

<sup>198</sup> Ibid.

<sup>199</sup> Cotrau, P., Hodosan, V., Vladu, A., Daina, C., Daina, L. G., & Pantis, C. (2019). *Ethical, Socio-Cultural and Religious Issues in Organ Donation.* *Maedica*, 14(1), 12–14. <https://doi.org/10.26574/Maedica.2019>,

A reversal of the classic slogan "Donate is a gift of life" for "Donate is to share life" is a suggestion. In addition, the following considerations are useful alternatives for changing current attitudes toward philanthropy: "We are all organ recipients at some point in our lives." "Organ donation and transplantation are accepted in all monotheistic religions." A struggle to encourage people to recognize a human right granted by Society: to donate or acquire donation of organs and flesh during life would be a social education that enables a true awareness of the problem.

Death phobia and reverence for the body's dignity are not always linked to ignorance or insufficient knowledge. Various studies looked into the social actions of considering the inference, fear of death as an inhibitor factor in the acceptance of organ donation and transplantation.<sup>200</sup> Pessimistic attitudes toward organ donation were found to be associated with higher fears of death and dying of the self and less strongly with higher fears of death and dying of others in such studies. Regardless of the gravity, organ donation should be viewed as a civic obligation that transforms a sad but unavoidable event into something that has a lasting impact on another person.

## **2.11 Possible Causes of the Current Crisis**

The idea that organ donation is an act of altruism and compassion, a "gift" that saves or changes one person's life, has centred on the early years of the transplantation period, which are used for education. Furthermore, several studies have revealed that most people are open to organ donation or donation after a family member's death. However, many people have a difficult time remembering that commitment when faced with a loss, and thus the "gift of life" is contested and not.

The insufficient social response to the chronic shortage of donated organs encourages the following fundamental changes in the donation message concept.

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<sup>200</sup> Ibid.

- (a) After death, our bodies are an extraordinary source of health for everyone.  
Organ failure is a medical emergency.
- (b) We are all potential organ and tissue recipients.
- (c) Organ donation is a way of saving or sharing life.

The state of healthcare and education, scientific societies, organ exchange agencies, and monotheistic religions representatives must all acknowledge these ideas for them to be implemented successfully.

A scientifically planned and widely disseminated media marketing campaign could have a significant impact on improving social attitudes toward transplants and donations. Nonetheless, the press has the ability to disseminate tainted and perpetuated records and myths, which can have a significant impact on improving the social path to transplantation and gift through an experimentally modified and widely disseminated media promotion effort.

However, all things considered, the media can most frequently spread partial and terrible records and fantasies:

- (a) Announcement of a premature death.
- (b) Transfer of characteristics from benefactor to recipient.
- (c) Characteristics of the benefactor are transferred to the recipient
- (d) Subterranean criminal market for organs.
- (e) Issues with the clinical network.
- (f) Organ distribution frameworks that allow big names to be among the first to receive transplants.

## **2.12 The Transplantation of Human Organs and Tissues (Amendment) Bill, 2018 Pakistan**

The Transplantation of Human Organs and Tissues (Amendment) Bill, 2018 is a proposed amendment to the existing law on transplantation of human organs and tissues in Pakistan. The bill aims to address certain issues and concerns related to organ transplantation in the country, including the prevention of organ trafficking and illegal organ trade.<sup>201</sup> The proposed amendments include the establishment of a regulatory authority to oversee and regulate the transplantation of human organs and tissues, the imposition of stricter penalties for those involved in illegal organ trade, and the provision of legal protection to living donors. The bill also seeks to expand the list of permissible donors to include not only close relatives but also non-blood relatives, spouses, and other individuals who may be willing to donate an organ for transplantation. The bill was introduced in the National Assembly of Pakistan in January 2018 and is currently under review by the relevant standing committee. If passed into law, the Transplantation of Human Organs and Tissues (Amendment) Bill, 2018 is expected to improve the regulation and oversight of organ transplantation in Pakistan and to help prevent the exploitation and abuse of vulnerable individuals.<sup>202</sup>

## **2.13 The Transplantation of Human Organs and Tissues (Amendment) Bill, 2018 and the Standing Committee on Law and Justice:**

The Transplantation of Human Organs and Tissues (Amendment) Bill, 2018 was referred to the Standing Committee on Law and Justice for review and recommendations. The committee submitted its report on the bill, which includes several proposed amendments.<sup>203</sup>

One of the proposed amendments is the requirement for the National Database and Registration Authority (NADRA) to maintain a database of all living donors and recipients. This is intended to ensure transparency and prevent illegal organ trafficking.<sup>204</sup>

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<sup>201</sup> The Transplantation of Human Organs and Tissues, (Amendment) Bill, 29 NOV 2018.

<sup>202</sup> Ibid.

<sup>203</sup> Ibid.

The committee also recommended strengthening the punishment for offenses related to illegal organ transplantation, including increasing the maximum term of imprisonment and fines. Additionally, the bill proposes to establish a central regulatory body to oversee and regulate organ transplantation in the country.

Overall, the amendments proposed by the Standing Committee on Law and Justice aim to address the concerns regarding the regulation of organ transplantation in Pakistan, particularly in preventing illegal activities and protecting the rights of both donors and recipients.

### **2.13.1 Key Provisions of the HUMAN ORGA TRANSPLANT Bill 2018**

Some of the Key Provisions of the Bill Include;<sup>205</sup>

- Requiring all hospitals performing organ transplantations to obtain and maintain accreditation from the government.
- Making it mandatory for all hospitals and medical facilities to maintain a record of all transplant surgeries and to report them to the government.
- Prohibiting commercial trade of human organs and tissues, with penalties of imprisonment and fines for those who violate this prohibition.
- Establishing a central computerized system for the registration of organ donors and recipients, to ensure transparency in the process of organ donation and transplantation.
- Requiring that all transplants involving a foreign recipient be approved by the government and subject to oversight by the relevant authorities.

The bill seeks to improve the regulation of organ donation and transplantation in Pakistan, with a focus on preventing organ trafficking and ensuring transparency and

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<sup>204</sup> Ibid.

<sup>205</sup> Ibid.

accountability in the process. It does not appear to contain any provisions related to NADRA.<sup>206</sup>

As per the report by the Standing Committee on Law and Justice regarding the Transplantation of Human Organs and Tissues (Amendment) Bill 2018, the following recommendations were made:

- The committee recommended that the government should establish a centralized authority to regulate organ transplantation in the country.
- The committee recommended that the government should ensure that the process of organ transplantation is transparent and that all organs are procured and transplanted in accordance with the law.
- The committee recommended that the government should take steps to raise awareness among the general public about the importance of organ donation and transplantation.
- The committee recommended that the government should provide incentives to encourage organ donation and transplantation, such as tax breaks or other financial incentives.
- The committee recommended that the government should make provisions for the National Database and Registration Authority (NADRA) to maintain a registry of organ donors and recipients.
- The committee recommended that the government should ensure that the law provides adequate protection to both donors and recipients of organs, and that

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<sup>206</sup> Ibid.

all organ transplantation procedures are performed by qualified and licensed medical professionals.

- The committee recommended that the government should take measures to prevent the illegal trade in organs and tissues, and should provide severe punishments for those involved in such activities.

The recommendations of the committee are aimed at improving the regulation of organ transplantation in Pakistan and increasing the number of organ donors in the country. These recommendations, if implemented, have the potential to save countless lives and improve the quality of life for many people in Pakistan.

## 2.14 Criticism on the Bill

The Transplantation of Human Organs and Tissues (Amendment) Bill, 2018 is an important piece of legislation in Pakistan that seeks to amend the existing law on organ transplantation.<sup>207</sup> The bill is aimed at regulating the transplantation of human organs and tissues in the country and preventing illegal organ trade. The Transplantation of Human Organs and Tissues (Amendment) Bill, 2018<sup>208</sup> in Pakistan has faced criticism from various quarters. Some of the criticisms of the bill are:

- **Bureaucratic Delays:**

While the bill has been widely welcomed as a positive step towards regulating organ transplantation in Pakistan, there are some criticisms and concerns that need to be addressed. One of the main criticisms of the bill is that it places too much power in the hands of the government and may lead to bureaucratic delays in the transplantation process.

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<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

- **Not Adequately Address the Issue of Organ Donation:**

Another concern is that the bill does not adequately address the issue of organ donation, which is crucial for increasing the availability of organs for transplantation. The bill should include provisions for promoting organ donation, raising awareness about the importance of organ donation, and creating a system for identifying and registering potential donors.

- **Not Providing Adequate Protection for the Rights of Donors and Recipients:**

Additionally, the bill does not provide adequate protection for the rights of donors and recipients. There are concerns that the bill does not provide adequate safeguards against exploitation of donors, such as ensuring that donors are not coerced or forced to donate their organs.

- **Not Providing Details on NADRA Provision:**

The bill also lacks clarity on the role of the National Database and Registration Authority (NADRA) in regulating organ transplantation. While the bill mentions the use of biometric data for the identification of donors and recipients, it does not provide details on how this data will be collected, stored, and used.

- **Lack of Transparency:**

The bill has been criticized for lack of transparency in its drafting and for not involving stakeholders such as medical professionals, patients, and civil society organizations in the process.

- **Restrictions on Organ Donors:**

The bill restricts the age of living donors to 18-45 years and limits the number of times a person can donate an organ to only two times in their lifetime. Critics argue that these restrictions will limit the number of available donors and reduce the chances of successful organ transplants.

- **Punitive Measures:**

The bill imposes strict punishments on those involved in illegal organ transplants, including imprisonment for up to 10 years and fines of up to 10 million rupees. Some critics have argued that these punitive measures may deter people from donating organs, even in legal and ethical circumstances.

- **Religious Concerns:**

The bill has faced opposition from some religious groups who view organ donation as a violation of their beliefs. There is concern that this opposition could discourage potential donors from coming forward and reduce the number of available organs for transplant.

- **Lack of Infrastructure:**

Some critics argue that the bill is not accompanied by the necessary infrastructure and resources to ensure the proper implementation and enforcement of the law. This could lead to a situation where the law remains ineffective in addressing the challenges of organ trafficking and illegal organ transplants in the country.

## **2.15 The Benefits of Comprehensive Legislation over Piecemeal Amendments**

The transplantation of human organs and tissues (amendment) bill, 2018, was introduced in Pakistan with the aim of regulating the transplantation of human organs and tissues in the country.<sup>209</sup> The bill seeks to amend the previous legislation, the Transplantation of Human Organs and Tissues Act, 2010.<sup>210</sup> While the amendment bill is a step in the right direction, it falls short of what is required to effectively regulate the transplantation of human organs and tissues in Pakistan.

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<sup>209</sup> Ibid.

<sup>210</sup> Ibid.

One of the key criticisms of the transplantation of human organs and tissues (amendment) bill, 2018,<sup>211</sup> is that it is not a full-fledged law but only an amendment to the existing law. The Transplantation of Human Organs and Tissues Act, 2010, has several shortcomings, including a lack of clear guidelines for the regulation of organ transplantation and insufficient penalties for those who violate the law. These issues could have been addressed by a new comprehensive law that takes into account the current state of organ transplantation in the country.

By simply amending the previous law, the transplantation of human organs and tissues (amendment) bill, 2018, fails to address the root causes of the problems in the organ transplantation system. It does not provide adequate measures to prevent the illegal trade of organs and tissues or to ensure the safety of donors and recipients. Moreover, the bill does not take into account the concerns of various stakeholders, including healthcare professionals, patients, and civil society organizations.

Another issue with the transplantation of human organs and tissues (amendment) bill, 2018,<sup>212</sup> is that it does not adequately address the issue of organ trafficking in Pakistan. The country has been identified as a major hub for the illegal trade of organs, with reports suggesting that vulnerable individuals are being exploited for their organs. The amendment bill does not provide a comprehensive framework for addressing this issue and fails to provide adequate safeguards for vulnerable populations. Full-fledged law may be more effective and appropriate than an amendment to an existing law. This is because an amendment may only modify a specific provision or aspect of an existing law, while a new law can provide a comprehensive and coherent framework for addressing a particular issue or problem.

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<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

In conclusion, while the transplantation of human organs and tissues (amendment) bill, 2018,<sup>213</sup> is a step in the right direction, it falls short of what is required to effectively regulate the transplantation of human organs and tissues in Pakistan. A comprehensive law that takes into account the current state of organ transplantation in the country, addresses the root causes of the problems in the organ transplantation system, and provides adequate measures to prevent organ trafficking is needed.

## **2.16 The Impact of Capitalism and Consumerism on Deceased Organ Donation Legislation in Pakistan: A Focus on Commercialism and Money-Driven Practices**

A Focus on Commercialism and Money-Driven Practices is a topic of growing concern in the healthcare industry. The issue of commercialism and the exploitation of human organs in Pakistan is often associated with the idea that the wealthy can purchase organs while the poor are forced to sell their organs for survival.<sup>214</sup>

Capitalism and consumerism have been shown to have a significant impact on the deceased organ donation legislation in Pakistan. Many people in Pakistan view the selling of organs as a form of income, and the demand for organs is often driven by wealthier individuals who can afford to pay for them. This has created a system where the poor are often exploited for their organs, and the wealthy can purchase organs to save their lives.<sup>215</sup>

The commodification of human organs raises important ethical and moral questions about the commercialisation of the human body, and whether it is appropriate for organs to be

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<sup>213</sup> Ibid.

<sup>214</sup> Waldby C, Mitchell R (2006) *Tissue Economies: Blood, Organs, and Cell Lines in Late Capitalism*. Durham, NC and London: Duke University Press.

<sup>215</sup> Ibid.

bought and sold like any other commodity. Critics argue that this system dehumanises organ donors and violates their human dignity, turning them into mere commodities.<sup>216</sup>

Furthermore, the focus on commercialism and money-driven practices in the organ donation system in Pakistan has also led to a lack of trust in the healthcare system. Many people are hesitant to become organ donors or donate the organs of their deceased loved ones due to concerns about their organs being sold for profit.

In nutshell, the impact of capitalism and consumerism on deceased organ donation legislation in Pakistan has had significant implications for the organ donation system in the country. The focus on commercialism and money-driven practices has led to the commodification of human organs and has raised important ethical and moral questions. There is a need for a more ethical and regulated system for deceased organ donation in Pakistan, one that prioritises the wellbeing and dignity of organ donors over commercial interests.

## **2.17 Conclusion**

Commercial purchases and sales of organs have threatened Pakistan's infamous reindeer business over the past decade. Pakistan was expected to use a different approach in its application of law and order. In Pakistan, doctors and hospital owners who perform commercial transplants have ties to government officials. Given the country's weak rule of law and high level of corruption, even this small lobby can use its resources and influence to prevent it from being implemented. With a stronger rule of law and less corruption, Pakistan should have taken more decisive action against this inhuman trade of organ trafficking, but there has only been a limited effort to stop transplant tourism by filing a lawsuit against brokers. Even under the most favourable conditions, activists' moral pressure is unlikely to

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<sup>216</sup> Ibid.

result in full range. Under The Human and Organ Transplant Act 2010. Anyone who has been a victim of illegal organ trafficking will be punished. The punishment consists of a 10-year prison sentence and Rs1 million fine. The law if properly implemented Pakistan's reputation as a "costly organ bazaar," ensuring that organ donation by Pakistani citizens is not permitted to citizens of other countries.

While the Transplantation of Human Organs and Tissues (Amendment) Bill, 2018 is an important step towards regulating organ transplantation in Pakistan, it needs to be strengthened to address concerns about donor and recipient rights, bureaucratic delays, and the promotion of organ donation. The government should also provide more clarity on the role of NADRA in the regulation of organ transplantation and ensure that the use of biometric data is in compliance with privacy and data protection laws, Overall, while the Transplantation of Human Organs and Tissues (Amendment) Bill, 2018 aims to address the challenges of organ trafficking and illegal organ transplants in Pakistan, it has faced criticism from various quarters for its restrictive provisions, lack of transparency, and concerns over its implementation and enforcement. A new law can also provide an opportunity for stakeholders to participate in the law-making process and provide their input and feedback, which can lead to greater buy-in and compliance with the law. This can be particularly important in cases where the law has significant social or economic implications, or where it affects the rights and interests of a large and diverse group of people.

## CHAPTER 3: THE FACTUAL BACKGROUND OF DECEASED ORGAN DONATION AND CASE STUDY IN PAKISTAN

### 3.1 Introduction

Deceased organ donation is a critical component of Pakistan's healthcare system, and while the country has made significant strides in recent years to improve the process, there are still many challenges that must be addressed to increase the number of donations and save more lives. This chapter investigates what is the current state of deceased organ donation in Pakistan and how has it evolved over time, including an examination of specific case studies to illustrate the challenges and successes in the deceased organ donation process? Pakistani police seized an apartment in Islamabad recently, releasing twenty-four men and women who had been detained without their consent. All of these people were supposed to go to a clinic where they could get a kidney to sell.<sup>217</sup> This trend has gradually spread throughout many countries, becoming a shadow of medicine in and of itself. According to the World Health Organization (WHO), about eight hundred strong organ transplantations are performed each year. Liver and kidney transplants are the most common.<sup>218</sup> Approximately thirty percent of these transplant procedures are performed in the United States, making it the primary target for those in need of organ transplant.<sup>219</sup> The available organ is either insufficient to deal with the rising stress levels in countries that have even effective organ donation systems. Those multiple roadblocks cleared the way for transplantation sightseeing, with patients from underdeveloped countries primarily India, the Philippines, China, and Pakistan. Where surgery is easier and more affordable. However, there is a downside to this. Their donation is hampered by serious legal, social, and cultural issues. This chapter illuminates factual

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<sup>217</sup> Huda Fatima, Tooba Fatima Qadir, Ariba Moin, Syed Bilal Pasha, "Pakistan: a transplant tourism resort?", *Journal of Public Health*, Volume 40, Issue 4, December 2018, Page 899, <https://doi.org/10.1093/pubmed/fox157>

<sup>218</sup> Paul E M Fine, *Bulletin of the World Health Organization*, Volume 85, Number 1, January 2007, 1-84, <https://www.who.int/Bulletin/En/>, assessed 2<sup>nd</sup>, September 2020.

<sup>219</sup> Ibid.

background of deceased organ donation in Pakistan. Declaration of Istanbul on Organ and tissue trafficking and Asian organ trafficking task force will be discussed with regard to that trafficking in India its cases Study of organ trafficking will also be highlighted. Both in India the registered illegal organ trafficking is very low because out of the court settlement takes place between the aggrieved party police and the organ buyers. This is the very reason minimal organ trafficking reported cases in Pakistan are registered. Those who has donated their organs after the list of those names are also included. Deceased Organ Donors.

### **3.2 Case Study of Organ Trafficking in Pakistan**

As the population of Pakistan is extremely poor, organ trafficking reported cases have a very poor track record. As a result, they opt for out-of-court settlements by accepting monetary and financial compensation. Unfortunately, in Pakistan's legal history, few cases involving organ trafficking has been filed,

*"Sharaf Ali vs. Additional Session Judge/ Justice of Peace, etc."* and titled as 2015 PCrLl 1758.<sup>220</sup>

The above case concerns the filing of a FIR against the doctor who fraudulently removed the petitioner's kidney. The police officials were ordered by the justice of the peace to file a FIR. Nonetheless, the Honourable High Court of Justice ruled that Peace had given directions for the registration of a FIR without express notice.

Because the offence is specifically contained by the space of Section 10 of the above Act, special provisions of the Human and Tissue Transplantation Act, 2010 apply. Section 14 of the Act establishes a special procedure for the offence, which makes it easier to recognise and identify the crime.

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<sup>220</sup> *"Sharaf Ali vs. Additional Session Judge/ Justice of Peace etc."* titled as 2015 PCrLl 1758.

- (a) No criminal offence punishable by this Act may be prosecuted in a court other than a first-class court, as authorised by Section 30 of the Criminal Procedure Code of 1898.<sup>221</sup>
- (b) Except for the following written complaint, no court shall recognise a criminal offence under this Act.
- Obsession with the supervisory authority or its secretary.
  - An injured person who, within fifteen days, informed the Supervisory

Authority of the alleged crime and his intention to file a complaint.

“The Court is responsible for the foregoing and is adamant that a separate law provided for a separate procedure for instituting criminal proceedings against an accused, and it is a well-established principle of law that when something is to be done in a specific area, and if not unlawfully, it is to be done in a particular way.”<sup>222</sup>

The following are the exact case particulars and brief facts as reported by the court of law.

*“Reported as 2015 PCrLJ 178 Lahore-High-Court-Lahore, Ss. 10 & 14— Penal Code (XLV of 1860), S.334--- Code of Criminal Procedure, Ss.22-A & 22-B, V of 1898 —Pakistan Constitution, Art. 199— Constitutional petition— Kidney removal —Principle— The respondent's grievance was that the petitioner, a doctor, fraudulently removed the kidney of his servant under the guise of performing appendix surgery. According to the respondent's application, the petitioner's case - validity the recognition of the offence under paragraph S.14 (2) (a) and (b) on the exchange of human organs and the 2010 Act was all that was required of the ex officio judicial of the peace. It can be filed by the*

<sup>221</sup> Section 30 of the Criminal Procedure Code of 1898.

<sup>222</sup> Ibid.

*Supervisory Authority or its Secretary, or by a "injured party" who has given the Supervisory Authority at least fifteen days' notice of the alleged offence and his intent to file a complaint."*

Following is the decision of the Lahore High court:

*"The separate law (Act) provided for a separate procedure for initiating criminal proceedings against the accused. When something had to be done in a certain way, it had to be done that way, and if it was not done so, it was illegal, by a respondent, the petition, which was not "injured," was unsustainable ex officio before the justice of the peace - the High Court exercised its powers, the ex officio order of the justice of the peace was overturned under Article 199 of the Constitution because it was clearly illegal and ultra vires. The High Court advised victims to seek the legal remedies available to them. In certain circumstances, the petition was granted."<sup>223</sup>*

The donation of an organ is legal if it is voluntary and without coercion or exchange of money. The lack of awareness and the widespread belief that it is taboo for deceased Muslims means that there is little willingness to donate. With the assistance of an organs business mafia, Pakistan's affluent constantly exploits millions of its impoverished.<sup>224</sup> Kidneys are so inexpensive that international bargain hunters, mostly from the Gulf, Africa, and the United Kingdom, are pilfering them.<sup>225</sup>

Pakistan has long been a global hub for the illegal organ trade, but medical and local authorities complain that they are unable to combat the practise due to ineffective

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<sup>223</sup> "State vs. Sharafat Ali", 2015 PCrLJ 178 Lahore-High-Court-Lahore.

<sup>224</sup> Huda Fatima, Tooba Fatima Qadir, Ariba Moin, Syed Bilal Pasha, "Pakistan: a transplant tourism resort", Journal of Public Health, Volume 40, Issue 4, December 2018, Page 899, <https://doi.org/10.1093/pubmed/fox157>

<sup>225</sup> Ibid.

enforcement policies and a lack of political will to combat it.<sup>226</sup> Despite claiming to have exported the organ trade out of the country, police were unaware of the various events in the organ trade that occurred over the last decade. Over 214 patients underwent transplant surgery, 15 of whom died during the procedure.<sup>227</sup>

Titled and Reported as: *2018 PCRLJ Note 80 Lahore High Court*

The incident's motivations, given that witnesses claimed the defendants and one of the victims were part of a large gang that engaged in human trafficking. The wife of the accused, one of the other victims, learned about the actions and rushed to her brother for assistance. The accused followed her on the guise of reconciliation, brought her back, and killed both ladies after giving his in-laws a fake explanation. The evidence showed that the motivation witnesses lacked any personal knowledge that the accused was engaged in illicit people trafficking. The victim's account, which was largely the basis for witness testimony and was not backed up by any direct or indirect evidence, the cops made no attempt to verify this information while conducting the inquiry. Under the circumstances, the purpose was not proved.<sup>228</sup>

Titled and Reported as: *2019 PCPLJ Note 80 Lahore High*

The prosecution's case was that one of the accused and the deceased woman were both part of a gang that was actively involved in human trafficking. The other woman, who happened to be the accused's wife, learned about the activities and went to tell her brother. The accused then chased her down under the guise of reconciliation, brought her back after giving his in-laws false information, and killed both of them. Records indicate that on November 12, 2004, a witness found the bodies of two unidentified dead bodies in a deserted ditch. It was announced from the local mosque that people would be called to identify them

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<sup>226</sup> Efrat, Asif. "Combating the Kidney Commerce: Civil Society against Organ Trafficking in Pakistan and Israel." *The British Journal of Criminology* 53, No. 5 (2013): 764-83. Accessed August 18, 2021. [Http://www.jstor.org/stable/23639789.](http://www.jstor.org/stable/23639789)

<sup>227</sup> Mudaser Kazi, "Illegal Organ Trade" *The express tribune*, Published June 5, 2017.

<sup>228</sup> 2018PCRLJ Note 80 Lahore High Court.

but no one could identify them. Later, the bodies were buried after fulfilling the legal requirements. On 10.1.2005, eight persons appeared before the investigating officer and identified the bodies on the same day from the photographs they had preserved, a witness joined the investigation and recorded his statement in which he named the appellant for the accused and six others for murder - the record shows that the prosecution did not present the photographer, and nor did he cite the images as evidence. Witnesses who identified the bodies at the police station did not say in their statement that they had identified the slain women. The prosecution, under the circumstances, failed to establish their identities and prove their case through the women. Evidence-on-appeal was allowed, and the accused was acquitted, overturning the trial courts sentenced.<sup>229</sup>

In Lahore, police, and other parts of Punjab, forty-nine first information reports have been filed against traffickers who abducted people and violently removed their kidneys before selling them on the black market. Unfortunately, a key figure named in the FIRs was not apprehended.<sup>230</sup>

In cities such as Lahore, Faisalabad, Bhalwal, Sialkot, Mandi Bahaowdin, Sargodha, Jhang, Sahiwal, Multan, Bahawalpur, Bahawalnagar, Rahim yar Khan, and Rawalpindi, numerous cases of organ trafficking have recently surfaced.<sup>231</sup> According to police tradition, he filed lawsuits against the Medical Hospital's management and doctors, but the defendants repeatedly buried the court, and the tribunals either dismissed the case as too weak or refused to hear the claimant's testimony.

*The State vs. Babar and others*<sup>232</sup> and *The State vs., Hamayun and others* cases like these are reported where the human organs had been illegally exchanged. *The State vs. M.*

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<sup>229</sup> 2019 PCPLJ Note 80 Lahore High

<sup>230</sup> Mudaser Kazi, "Illegal Organ Trade" The express tribune, Published June 5, 2017.

<sup>231</sup> Ibid.

<sup>232</sup> *The State vs. Babar and others*, Case No: W.P. No.2565/2014.

*Afzal et al.*<sup>233</sup> *The State vs. Ghulam Hassan.*<sup>234</sup> Because of their poor financial situation, they were persuaded to sell their organs for very minimum amount i.e. less than seventy thousand rupees. They later lodged the cases at their respective courts<sup>235</sup>

*The State vs. Heart International Hospital and so on,*<sup>236</sup> the hospital's practise and license were revoked by the court because it was being used for illegal organ transplantation. The following First Information Report (FIR) was filed, Numb 887, Police Station Lahore. *State vs. Muhammad Riaz and others*<sup>237</sup> and in FIR, Numb, 1988, Police Station Lahore *M Sharif and other cases vs. State.*<sup>238</sup> In FIR, Numb, 726, South Police Station *Babar Ali and others vs. Lahore State*, kidneys were illegally removed and sold without the consent of the complainants.<sup>239</sup> The complainant's bone marrow was ejaculated without his or her consent, and the court has yet to rule on the cases.

The Supreme Court (SC) has formed a four-member committee led by renowned surgeon Dr. Adibul Hassan Rizvi to propose solutions to the country's illegal human organ trade. The decision was made during the Suo Motu case by a three-judge council chaired by Mian Saqib Nisar, Chief Justice of Pakistan (CJP), based on a letter from Dr. Rizvi, Director of the Sindh Institute of Urology and Transplantation (SIUT). In the Supreme Court Karachi register, it has been approved. Initially, the chief judge ruled that the illegal organ trade should be stopped, and enlisted medical experts to assist the court.<sup>240</sup>

### **3.3 Suo-Moto Action Regarding the Illegal Transplantation of Organs**

In the Hounrable Supreme Court of Pakistan CMA No 2018, S.M. No. 11 of 2016. Suo moto action regarding the illegal transplantation of organs was initiated. In which various

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<sup>233</sup> *The State vs. Hamayun and other*, Case No.1358/2012

<sup>234</sup> *The State vs. M. Afzal et al*, 2016, YLR Karachi 62.

<sup>235</sup> *The State vs. Ghulam Hassan*. (PLD 2010 Karachi) 182.

<sup>236</sup> *The State vs. Heart International Hospital*, (2015 PL, Lahore 1661.

<sup>237</sup> FIR, Numb 887, Police station Lahore, 28.7. 2011.

<sup>238</sup> FIR, Numb, 988, Police station Lahore, 8.5.2011.

<sup>239</sup> FIR, Numb, 726, Police station Lahore, 1.11.2012.

<sup>240</sup> Ibid

recommendations has been made, which was put forward to the apex court for consideration and issuance of directions to the concerned authorities for implementation of such recommendation.<sup>241</sup> Following the order of the Supreme Court,<sup>242</sup> a conference was held on 20-21 April 2018 (National conference and workshop on organ donation) at SIUT. In this conference, four groups were made for each area to come up with recommendations each group presented their views and was approved as a conference declaration. In this conference,

The following actions were recommended for illegal transplantation and sale of human organs which can be categorized under the following heads.<sup>243</sup>

### **3.4 The Global Organ Trade's Burden**

For more than a decade, the illegal organs trade has penetrated substitution drugs, and several individuals and groups are involved in illegal organ harvesting and facilitating activities from living donors. China is an example of this. Due to concerns that organ donations may not be voluntary but are harvested vigorously and unethically from Chinese prisoners, over more than eighty five thousand organ transplants in China from prisoners per year is made.<sup>244</sup>

Given the fact that there are many forms of organ trafficking (such as transplant tourism, organ sales, and organ harvesting), the emerging discourse attempting to define the phenomenon is focused on the trafficking of people for their organ(s) and thus falls under the meta-narrative of human trafficking.<sup>245</sup>

This distinguishes the legitimate field of transplant medicine from the criminal underworld of human trafficking and organised crime. In the meta-narrative of human

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<sup>241</sup> In the Honorable Supreme Court of Pakistan CMA No 2018, S.M. No. 11 of 2016.

<sup>242</sup> Ibid

<sup>243</sup> "Conference was held on 20-21 April 2018, (National conference and workshop on organ donation) at SIUT.

<sup>244</sup> F. Ambagtsheer and W. Weimar, "A Criminological Perspective: Why Prohibition of Organ Trade Is Not Effective and How the Declaration of Istanbul Can Move Forward," *American Journal of Transplantation* 12, no. 3 (December 7, 2011): 571–75, <https://doi.org/10.1111/j.1600-6143.2011.03864.x>.

<sup>245</sup> Snajdr, E, "Beneath the Master Narrative: Human Trafficking, Myths of Sexual Slavery and Ethnographic Realities." Retrieved from *Dialectical Anthropology* 37:229–256: [Http://Link.springer.com/](http://Link.springer.com/) Accessed 14 May 2020.

trafficking, the "dark side of transplantation" is depicted as organ trafficking.<sup>246</sup> The antidote to the rhetoric of the "gift of life," which extols the virtues of altruistic organ donation.<sup>247</sup>

Supporting the transplant industry outside of legal institutions is a criminal offence. Between the "great medical and scientific miracle of transplantation" and the organised crime of organ trafficking, a dyadic division is essentially constructed.<sup>248</sup>

This rhetoric diverts attention away from the positioning of transplants and their role in creating demand for illegally harvested organs. The organ shortage is instead described as a moral crisis that "threatens to damage the dignity and legacy of transplants around the world" (International Summit on Transplant Tourism and Organ Trafficking, 2008).<sup>249</sup>

"The need to establish organizational measures to promote organ donation and increase organ availability," according to a joint study by the Council of Europe and the United Nations, was cited as a key recommendation for the prevention of organ trafficking. Is: With a preference for the deceased, donations should be made to organs with the greatest healing potential. Furthermore, there is a need to improve the world's organizational and technical capabilities for organ transplants.<sup>250</sup> When organ trafficking is referred to as a human trafficking problem due to a scarcity of human organs, it fosters a particular mind-set that encourages specific types of intervention. The idea that body trade is a direct result of the global organ crisis is a critical assessment of the biomedical process that has exposed our bodies to new forms of exploitation. Rather, the benefits of transplantation are said to be a sign of social progress and prestige, which drives demand among a new generation of

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<sup>246</sup> "Panjabi, R. K., "The Sum of a Human's Parts: Global Organ Trafficking in the Twenty-First Century." *Pace Environmental Law Review*, 28(1), 1–144., 2010.

<sup>247</sup> "NHS (2013). Organ Donation: "The Gift of Life. Information about the NHS Organ Donor Register." Retrieved from NHS: [https://www.organdonation.nhs.uk/Newsroom/Fact\\_sheets/Language\\_leaflets/Organ\\_donation\\_english.pdf](https://www.organdonation.nhs.uk/Newsroom/Fact_sheets/Language_leaflets/Organ_donation_english.pdf). Accessed 8 June 2020.

<sup>248</sup> "Ambagtsheer, F., et Al," *The Battle for Human Organs: Organ Trafficking and Transplant Tourism in a Global Context.* *Global Crime*, 14(1), 1–26., 2013.

<sup>249</sup> "WHO (2010). *World Health Organisation (WHO) Guiding Principles on Human Cell, Tissue and Organ Transplantation.* Retrieved from the World Health Organisation: [http://www.who.int/Transplantation/Guiding\\_PrinciplesTransplantation\\_WHA63.22en.pdf](http://www.who.int/Transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf). Accessed 14 June 2020.

<sup>250</sup> *Ibid*

consumer patients in the global South's emerging economies. States are encouraged to expand their organ supply and build their own health infrastructure in order to facilitate the transfer of biotechnologies like transplants.<sup>251</sup> Otherwise, organ trafficking could occur: shortages must be addressed right away, or illicit trade and crime will thrive. As a result, investing in modern health technologies is a valid area of intervention for society improvement. On the other hand, a broader critique of the trend linking the emergence of the global market for organs with neoliberal globalisation and its discontent is hampered by the harmonisation of organ trafficking in the human trafficking debate. Rather, organ trafficking as a means of combating crime characterises the entire industry. The importance of the organ trafficking discourse obscures the analysis of the broader structural factors of organ trafficking, as shown in the following section.

### **3.5 Declaration of Istanbul on Organ and Tissue Trafficking**

The Declaration of Istanbul on Organ and Tissue Trafficking is the original manuscript drawn up by the global transplantation communal group to identify and denounce organ trafficking and transplantation tourism.<sup>252</sup> The Declaration lays out specific guidelines based on specific concepts. Organ trafficking and transplants may be prohibited because they violate the values of equality, impartiality, and respect for man's dignity.<sup>253</sup> Its main goal is to educate, promote, and encourage ethical organ donation and transplantation practises all over the world.<sup>254</sup> It aims to achieve this goal by promoting the prohibition of transplants, sight-seeing, and organ trade, as well as punishing those who endorse or promote them. It is based on Resolution 57.18 of the Declaration of Human Rights and the World Health Assembly.<sup>255</sup>

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<sup>251</sup> Rose, N, "*The Politics of Life Itself. Theory*", *Culture & Society*, 18(6), 1–30," 2013.

<sup>252</sup> "*The Declaration of Istanbul on Organ Trafficking and Transplant Tourism. Transplantation* 2008; 88: 1013–1018,"

<sup>253</sup> *Ibid.*

<sup>254</sup> *Ibid.*

<sup>255</sup> "In 1987 the Fortieth World Health Assembly, Concerned at the Trade for Profit in Human Organs, Initiated the Preparation of the First WHO Guiding Principles on Transplantation, Endorsed by the Assembly in 1991 in Resolution WHA44.25." Available from: [www.who.int](http://www.who.int). Accessed May 26, 2020.

This achievement is largely due to the World Health Organization's Guiding Principles on Human Body, Tissue, and Organ Transplantation. This achievement has been acknowledged. Nonetheless, the prohibitionist discussion in the Guiding Principles and Declaration focuses primarily on prohibition, neglecting to mention the importance of criminal prosecution. The World Health Organization (WHO) first declared an organ trade ban in 1987, claiming that it violated the Universal Declaration of Human Rights and was incompatible with the most basic human values. The World Health Organization's Guiding Principles explain and justify the prohibition of organ sales.<sup>256</sup>

"Organs payment is likely to benefit the poorest and most vulnerable, eroding altruistic donations and leading to profits and human trafficking," according to the five principles' commentary of world health assembly. This payment gives the impression that some people aren't trustworthy and are just tools for others to use."<sup>257</sup>

The ban on organ trafficking must be viewed in the context of when it was conceived: when organ failures were rare and there were few crimes such as trafficking.<sup>258</sup> It was able to stop human trafficking and human beings at the time, owing to the fact that the root cause of the crime was not as widespread (lack of organs). The prohibition serves as both a safeguard and a general guideline for the use of the organ for commercial purposes. The concept of non-commercialization of organ transplantation is supported by almost every country and has been incorporated into national legislation. The Declaration, which is by definition non-binding, has had a significant impact. Over a hundred transplantation organisations support its values. Countries like Pakistan, China, and the Philippines have enacted new legislation

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<sup>256</sup> Ibid.

<sup>257</sup> Ibid.

<sup>258</sup> "Editorial, *Illegal Organ Transplants: Gov. Order's Campaign against Heinous Practice*, "the Express Tribune, May 8th, 2017.

and strengthened regulations prohibiting the sale of organs.<sup>259</sup> The Istanbul Declaration has far-reaching implications. It necessitates a legal and technical framework in each region to regulate organ donation and transplantation activities. This necessitates a unified regulatory oversight framework that protects donors and recipients while also prohibiting unethical behaviour. Individuals who violate the Declaration's principles will no longer be eligible for membership in professional associations. Pharmaceutical companies, as well as public and private funding bodies, must share the Declaration when seeking support for clinical research.

### 3.6 Asian Organ Trafficking Task Force

The 2007 Asian Task Force on Organ Trafficking, led by an international working group organised by National Taiwan University, is another initiative that has targeted the unethical practise of organ trafficking.<sup>260</sup>

Since Asia has become a hotspot for transplant tourism and trafficking, the task force was formed to develop a set of recommendations on how to combat organ trafficking, particularly in Asia.<sup>261</sup> During the preparation phase, the task force first drafted a draught recommendation, which was then circulated for external feedback. Individual scholars, organisations, and government officials, as well as draught recommendation referees, provided thoughtful and constructive feedback to the working group. If implemented, the recommendations on organ trafficking prevention, prevention, and elimination in Asia will aid health authorities in a concerted effort to prevent and eradicate organ trafficking. To this end, the Task Force urges the authorities to purchase organs, the base recommendations were:

- (a) Develop an organ transplant monitoring system and a national registry.
- (b) Rely more on donated organs from the deceased.

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<sup>259</sup> Michael BOS, Chair of the Ethics Committee of Euro transplant International Foundation, the Netherlands, directorate-general for external policies policy department, July 2015 -pg 549.055 © European union, *study Trafficking in Human Organs*, ISBN 978-92-823-7577-8 (PDF) Doi:10.2861/8097(PDF).

<sup>260</sup> "The Asian Task Force Recommendation on Organ Trafficking", 2008, Available At:<http://www.law.ntu.edu.tw/Center/Wto/04research.asp>, [Last Visited 25 Feb 2021].

<sup>261</sup> *Ibid.*

- (c) Gaining to be self-sufficient in transplantable organs.
- (d) Organ transplants should only be given to people who are of national origin, such as organ donors.
- (e) To prevent organ trafficking, meet the needs of the underprivileged population.
- (f) Transparency and accountability must be observed in their respective rules and regulations.
- (g) Adopt a policy that discourages citizens from travelling to other countries for transplants.
- (h) Avoid policies that have the inevitable effect of encouraging illegal organ transplants.
- (i) Consider paying a reasonable and socially acceptable compensation to pious living organ donors.
- (j) Provide organ counselling and support to ensure the physical and mental health of living organ donors.

The recommendation was distributed to the Health Authority's contacts, relevant professional associations, and international organisations. In comparison to other measures, a novel provision proposed in this document restricts organ donation to recipients of the same nationality.<sup>262</sup>

Considering that in many cases of organ trafficking, organ donors and recipients do not share the same nationality, implementing such a recommendation is a highly practical way to prevent cross-national organ trafficking. There will be action. Such a prohibition was

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<sup>262</sup> "Recommendations on the prohibition, prevention and elimination of organ trafficking in ASIA [ Taipei Recommendations ]," 2008, Article 16.

a critical component of Iran's organ procurement system in order to keep the country from becoming a hotspot for organ trafficking.<sup>263</sup>

### **3.7 Organ Trafficking in India: A Case Study**

In several cases, India's Superior Courts recognised the need to curtail the exploitative business of humans, particularly children and women, and praised transplantation while keeping the requirements of the 1994 Human Organ Transplantation Act in mind. The Indian judiciary's case law on exploitative human trafficking and organ transplantation is as follows.

#### **3.7.1 Bachpan Bachao vs. Union of India & Others (Delhi) 565**<sup>264</sup>

Human trafficking of women and children is the most serious form of human abuse and exploitation. Every day, thousands of Indians are sold into slavery for various reasons. They are forced to live in brothels, factories, guesthouses, dance bars, farms, and even wealthy Indians' homes, unable to control their bodies and lives. Human trafficking is expressly prohibited by the Indian constitution. Article III of the Basic Law Part 23 of the Fundamental Rights prohibits the application of "human trafficking and other similar forms of forced labour."<sup>265</sup> Although there is no specific definition of human trafficking, it can be stated that human trafficking always involves the movement or transport of a person through coercion or deception, and thus exploitation that leads to human trafficking. Human traffickers, recruiters, shippers, sellers, buyers, end-users, and other abusers take advantage of the vulnerability of human trafficking.

Human trafficking is exploding as a result of globalisation. Profits increased with or without a minor risk, low priority for business, law enforcement, and so on. The situation is

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<sup>263</sup> "Bagheri, A. "Asia in the Spotlight of International Organ Trade": Time to Take Action. Asian Journal of WTO and International Health Law and Policy 2(1): 11–24," 2006.

<sup>264</sup> W.P. (CrI.) No. 82 of 2009) was filed by "Bachpan Bachao", an NGO; 2nd petition (W.P. (CrI.) No. 879 of 2007) was filed by "Shramjeevi Mahila Samiti", an NGO; and the 3rd petition (W.P. (CrI.) No. 619 of 2002.

<sup>265</sup> Article 23 of the Indian Constitution of 1949.

exacerbated. The revenue generated by human trafficking is comparable to that of arms and drug dealers.<sup>266</sup>

Human trafficking is for use and can usually be classified as follows:-<sup>267</sup>

- (a) Sexual Based
- (b) Non-Sexual Based.

The first category covers different forms of trafficking in prostitute persons, trade-in sexual violence, pedophilia, pornography, cybersex, and masked sexual exploitation in some massage rooms, bars, and other events, such as telephone beatings. Fraternity, sixteen clubs, etc. Non-sexual trafficking could involve various types of serfdom like homework, industrial work, adoption, exchange of organs, camel racing, wedding rackets, and so on."<sup>268</sup>

### **3.7.2 Nagendra Mohan Patnaik and Others vs. The Government of Andhra Pradesh, Rep. (1997 (1) ALT 504)<sup>269</sup>**

"The existence of large-scale illegal removal, storage, and commercialization of human organs, which affects the impoverished segments of society, are well-known reasons to restrict the removal and transplantation of human organs by all medical practitioners/persons, so that no one benefits at the expense of the donors." No one can negate that when a human organ transplant is required to save a life and medical science has recognised it as a method, it should be approved as a well-known and well-practiced procedure.<sup>270</sup> Health professionals, on the other hand, cannot act like mercenaries, seeing only the recipient's interests and not the donors'. Can society allow any hospital or clinic/doctor or physician to go astray and remove human organs to help it thrive as a business and the emergence of middlemen to benefit at the expenditure of donors, who

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<sup>266</sup> "Human Rights and Human Trafficking Fact Sheet No. 36" United Nations, New York and Geneva, 2014,"

<sup>267</sup> Ibid.

<sup>268</sup> Ibid.

<sup>269</sup> "Nagendra Mohan Patnaik and Ors. Vs. The Government Of A.P". Rep. 12 November, 1996 Equivalent citations: 1997 (1) ALT 504 Author: P Mishra Bench: P Mishra, B Somasekhara, V R Reddy.

<sup>270</sup> Ibid.

sometimes agree to sell their organs for financial reasons? There would have been no need for the State Legislature to intervene if concerned citizens had shown respect for life values. Health professionals have a high social status in society and are treated with respect by all parties involved, as all beings, particularly human beings, require their services. We have reasons to believe that hospital regulation, as envisioned by the Act and the Rules made thereunder, reinforces that they must perform their duties by caring for both the recipient and the donors, and that they do not fall victim to the schemes of those who wish to profit at the expense of others.<sup>271</sup>

### **3.7.3 Balbir Singh vs. Authorisation Committee and Others AIR 2004 Delhi 413)**<sup>272</sup>

"Following the Society's common organ donation and transplant standards, the principles and guidelines for each society and community should be elaborated and developed." Organ transplantation trade, commercialization, and exploitation on a global scale is a disincentive and should be avoided as a universal standard. Following Section 9 of the Authorization Committee, the donors can be a relative or even a stranger for whom a transplantation bill of donation is required for the sake of tenderness, friendliness, or other exceptional motives."<sup>273</sup>

Donors who fall into either category are entitled to protection and priority treatment if the need arises. Similarly, these benefits could be extended to relatives of people who have consented to organ donation."<sup>274</sup>

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<sup>271</sup> Ibid.

<sup>272</sup> M Sarin Bench: M Sarin, "*Balbir Singh vs. The Authorisation Committee*", 6 September, 2004 Equivalent citations: AIR 2004 Delhi 413.

<sup>273</sup> "*The Transplantation of Human Organs Act of 1994*", Section 9.

<sup>274</sup> M Sarin Bench: M Sarin, "*Balbir Singh vs. The Authorisation Committee*", 6 September, 2004 Equivalent citations: AIR 2004 Delhi 413.

### **3.8 Registered Deceased Organ Donors**

Donating an organ as an act of provision to mankind is not a common practise in Pakistan's ethos, where sacred transcription rather than judgement affects administration and consciousness is low. Blood relatives oppose the donations, and the number of people willing to have their organs removed after death can be calculated with a probe. According to the data based provided by Sindh institute of urology research, following are registered deceased organ donors in the last two decades.<sup>275</sup> A new era of organ sharing began in the late 1990s. It's a bit of a conundrum that we have so few registered deceased organ donors: Shamim Bano, Syed Imran Shah, Abdul Razak Memon, Syed Imran Shah, Arsalan , Abdul Sattar Edhi, Aban Jamal Muhammad Zahid, Syed Naveed Anwar, Taqriq Aziz.<sup>276</sup>

### **3.9 Maximizing the Potential of Deceased Organ Donation: A Global Perspective**

This chapter will examine the role of the law in the struggle for social change on the topic of deceased donation in advanced and legally enriched countries. The detailed and critical examination of deceased organ law around the globe, as well as Muslim world practices, will be outlined, which will assist Pakistani legislators in designing and enacting future deceased-specific legislation. Altruism and voluntarism are the current organ donation practices around the globe. In different countries, the same policies may lead to different practices and may be changed to reveal their feature regarding ethos, civilization, and political affairs. Altruism, human autonomy, and voluntarism are the three key motivating factors around which current policies and laws were built. Accordingly, relying on these three factors would not efficiently address the lack of donated organs to many policymakers. New approaches to three factors are developed with or without trying to increase the recovery of

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<sup>275</sup> "Durdana Najam, Kidney Transplantation: *"Cultural and Legal Challenges"*, the Express Tribune, Published: March 12, 2012.

<sup>276</sup> "Transplantation Society of Pakistan Secretariat, Sindh Institute of Urology & Transplantation Civil Hospital Karachi,"

organs by their cultural, social, and political features. The same strategy leads to different results in different countries.

This issue is addressed by the purpose of the proposed policies: the legal authority over the post-death body and the overall aim of reducing the gap between demand and organ supply. Those who have legal control of the body following death are required to be authorized to protect the life of the human body. Ethicists discussed for a long time the right to die and the morally correct exercise of this right.<sup>277</sup>

### **3.10 Legal Frame Work Governing Deceased Organ donation in the UK**

In the UK, the legal frameworks regulating deceased organ donation generally derive from statutory law. The Act of 1961 on the transplantation of organs and 1952 on the Corneal Splicing Act on the transplantation of corneal tissue.<sup>278</sup> The procurement of organs from the deceased was governed by these early statutes. However, the present law covers multiple disciplines in deceased organ procurement. With The Human Tissue Act 2006, these legal standards now differ around the UK. It applies to Wales, Scotland, England, and Northern Ireland. But the act fell into multiple disputes. In particular, the activities uncovered by the Bristol Royal Infirmary and Alder Hey Children's Hospital Inquiries have revealed the inadequacy and lack of knowledge and communication of current post mortem conservation procedures.<sup>279</sup> However, they identified an apparent need to turn to a clear agreement clause enshrined in the rule to procure deceased organs appropriately. While clear approval was often gained in medical training from the families of organ donors, irrespective of the real reports of the 1961 Act.<sup>280</sup>

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<sup>277</sup> Abdulaziz Sachedina, 'Right to Die? Muslim Views about End of Life Decisions'. (June 7, 2005),pg numb, 4-6

<sup>278</sup> D.P.T. Price, "Legal Framework Governing Deceased Organ Donation in the UK," *British Journal of Anaesthesia*, 108 (January 2012): i68–72, <https://doi.org/10.1093/bja/aer356>.

<sup>279</sup> "Global Observatory on Donation and Transplantation," 2006. Report Available At: [Http://Www.transplant-Observatory.org/Pages/Home.aspx](http://www.transplant-observatory.org/Pages/Home.aspx).

<sup>280</sup> Shimazono Y. Mapping, 'Transplant Tourism.' *Presentation at the World Health Organization's Second Global Consultation on Human Transplantation*, March 28–30, 2007, Geneva.

The law of 2004 has many applications and materials from the living and the deceased. Scotland's law only applies to organs from the dead, excluding such particular offenses related to the disposal of the living organs. However, the latter is not like the 2004 Law, although many of the further mechanisms and processes of this Act also apply to Scotland through an arrangement with the executive of the school, i.e. through the Human Tissue Authority.

### **3.11 Critical analysis on The UK Human Tissue Act 2004**

The Human Tissue Act 2004 was introduced in the UK to regulate the use and storage of human tissues for medical purposes, including organ transplantation. While the Act has helped to establish guidelines for ethical practices in this area, there are several criticisms of the Act that merit consideration.

Firstly, the Act is often criticised for not providing clear guidelines on how to obtain appropriate consent. Although the Act requires explicit consent from adults, it does not provide clear guidance on what constitutes explicit consent. This lack of clarity can lead to confusion among healthcare professionals and may result in inconsistencies in obtaining consent.

Additionally, the Act is often criticised for not adequately addressing issues related to ownership and control of human tissues. The Act allows for the use of human tissues for medical purposes, but it does not provide clear guidance on who owns these tissues and who has control over their use. This has led to concerns about the commercialisation of human tissues and the potential exploitation of vulnerable populations.

Furthermore, the Act has been criticised for not adequately addressing issues related to the storage and use of human tissues for research purposes. While the Act allows for the use of human tissues for research, it does not provide clear guidelines on how to ensure that

research is conducted ethically and in a way that respects the rights of the individual from whom the tissues were taken.

Finally, there are concerns that the Act is not adequately enforced. The Act relies heavily on self-regulation and voluntary compliance by healthcare professionals, which may not always be effective in ensuring

### **3.12 Western Union Regulatory Framework on Deceased Organ Donation**

The quality and safety of human transplant organs have been regulated by a legal directive by the Western Health Commission. They provided a handbook on the following transplantation aspects in detail.<sup>281</sup>

- (a) Inspections to ensure the identity of the donors.
- (b) Donors' family authorization and authentication of approval.
- (c) Check that characterization of organ and donor by specified parameters is completed.
- (d) Organs are procured, processed, packaged, and marked.
- (e) Organ transport.
- (f) Reporting of severe adverse events and reactions at all points. Besides, the advisory to the Western Commission says that:<sup>282</sup>

"There must be sufficient expertise for all health care staff involved in the process, recruitment at suitable operation theatres, donor's selection, and assessment should follow the guidance and help of a physician, medical teams will seek to get the necessary details from families of the departed donors or other individuals, organ and donors testing".<sup>283</sup>

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<sup>281</sup> C. Rudge et al., "International Practices of Organ Donation," *British Journal of Anaesthesia* 108 (January 2012): 48–55, <https://doi.org/10.1093/bja/aer399>.

<sup>282</sup> Ibid.

<sup>283</sup> Ibid.

### **3.13 World Health Assembly (WHA)**

In 2004, the states were gathered to take action to discourage transplantation tourism and organ trafficking in the poor and marginalized populations, including the major international human tissue and organ trafficking problem. About 10% of the world's organ transplantation activities were deemed to be illegal by the World Health Organization. Countries have also been asked to draft travel guidelines for steps to deter illicit transplantations through organ donation.

**(a) When travel for transplantations involving donors was to be allowed:**

- When the recipient in their country of residence and destination has dual nationality and wants to consider transplantation from a living donor in a non-resident destination country who is a family member.
- Where the donors and the receivers are hereditarily or passionately linked and agree to experience a donation and transplantation process to improve the overall health and residential facilities.

**(b) When travel for transplantations involving deceased donors was to be allowed:**

- Where there are officially controlled bilateral or multilateral organ sharing programs, grounded on reciprocal systems for the sharing of or between jurisdictions.

### **3.14 World Health Organization WHO Guidance Documents**

Deceased donations should be made in their full therapeutic capacity, but adults can donate organs in compliance with domestic legislation. Donors who usually live should be linked to their recipients either genetically, legally, or financially. Live donations are appropriate if a donor is aware and voluntary, whether the donors are cautious and monitored, and if the criteria for choosing the donors are being carefully applied and monitored. The

future costs, benefits, and impact of donations should be thoroughly and reasonably notified by live donors; be legally competent and weight able; and act openly, without undue interference or coercion.

### **3.14.1 Commentary on Guiding Principle 3 <sup>284</sup>**

The principles emphasize the need to take legal and realistic action to encourage networks of deceased donors where they do not exist and to ensure successful and efficient implementation of existing programs. The Notion also sets out the basic criteria for live donations while promoting the creation of transplantation schemes to avoid the inherent risk to living donors. The genetic link between the donors and the recipient is important and will reassure the donors of their sincere interest, along with the legitimate relation between spouses. Many altruistic donations often come from donors who are emotionally linked, although the intensity of a connection is difficult to quantify. Psycho-social assessment is important to prevent donors' coercion and/or commercialism forbidden by the principle with live donations, particularly from unknown donors.<sup>285</sup>

The examination is administered by a professionally trained, impartial person. The Health Authority may help understand – and deter – donors who are pushed into or readily paying out transactions by assessing the purpose of the donors and the recipient's expectations of outcomes. The principle stresses that practical and well-enforced decisions are made that require evidence that is complete, impartial, and locally reasonable and excludes marginalized persons who cannot meet the requirements of voluntary and informed approval. Voluntary approval also ensures that sufficient withdrawal arrangements remain before the receiver's medical treatment reaches an acute point of danger to the receiver in the

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<sup>284</sup> Sixty-Third World Health Assembly, World Health Organization, "WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation," *Cell and Tissue Banking*, Commentary to Principle 3, (2010): 413–19, <https://doi.org/10.1007/s10561-010-9226-0>.

<sup>285</sup> Ibid.

absence of the transplantation. This should be reported when permission is given. Finally, it highlights the importance of preserving the health of live donors when they are collected, donated, and cared for so that the potential adverse effects of donation do not affect the rest of the life of the donors. Donor's treatment is enough for the recipient, and all health services are responsible for the same well-being.

### **3.15 Deceased Organ Donation Practice in India**

In India's early years of deceased donation, financial, religious, and social ideals, as well as lack of public knowledge, were thought to prevent families from approving. Failure to donate the organs of the deceased has often been due to a lack of public education, awareness, and understanding. It soon became clear, however, another reason that hindered donation was that if body organizations made concerted efforts to identify and approach family members of the deceased donors, the approval rate was likely to be high.<sup>286</sup> Also, transplantations of the deceased donors were not performed due to the lack of structured mechanisms to consult and contact brain-dead individuals' families. It was the same story as in eye and blood donation which in India has a much longer history. Only four hundred and ninety-nine deceased-donors transplantations have been performed since 2000, including heart, liver, and kidney transplantations.<sup>287</sup> The transplantation process in India started in the 1970s with kidney transplantation, after which the Asian subcontinent took the lead in this arena.<sup>288</sup> The creation started each decade in the first decade with the mastery of surgical techniques along with immune suppression.

Over the years, the process and procedure of obtaining approval to extract organs from deceased individuals have developed across the world. The most frequent is the

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<sup>286</sup> Goyal M., Mehta RL, Schneiderman LJ, Sehgal A. "Economic and Health Consequences of Selling a Kidney in India." *JAMA* 2002; 288: 1589–1593,"

<sup>287</sup> Dr. Amrutha AM, "'Organ Donation: Awareness, Attitudes and Beliefs among Medical Students of Mysore, Karnataka,'" *International Journal Of Preventive, Curative & Community Medicine* 3, no. 3 (October 9, 2017): 33–37, <https://doi.org/10.24321/2454.325x.201712>

<sup>288</sup> Ibid.

"informed approval," where members of the local family intend to donate organs after death certification.<sup>289</sup> In India, it is the form of approval practiced "Family approval" is a complex term, unlike other nations, however, the laws do not define parental hierarchy. Organ transplantations in India have a fairly short history as compared to the developed world. Even as India was the centre of one of transplantation's big ethical scandals, the academic and scientific contribution to that specialty was negligible.

### **3.15.1 The Transplantation of Human Organs Act 1991 (India)**

In 1991, the Central Government formed a committee to draft a report which could serve as a basis for all Indian organ transplantation legislation. It is recommended that human organ trafficking be a criminal offense. In 1994, the Indian government enacted the Human Organ Transplantation Act (THOA) in 1995, and subsequently, these laws were revised in 2008.<sup>290</sup> In 2014 the rules for the amended act were told. In 1994 it banned any kind of "private business" in organs. Unrelated donations were permitted on altruistic grounds but only with authorization committee approval. Scandals involving anonymous sources have continued to occur in the media long after THOA was promulgated. Media exposures appear to have decreased in the last few years. This may represent an overall decline in what was once a booming industry, but it is also assumed that some of the crime moved underground and some moved out of the country where the wealthy and powerful took advantage of more liberal laws in countries i.e. Singapore and went live unrelated transplantation. This law was enacted according to the UK Transplantation Act. At the same time, THOA also allowed brain death in India, paving the way for deceased donation by collecting organs from dead brain stem donors. The Act also stipulated requirements to assess brain death. The Act also stipulated requirements for brain death evaluations. The laws supported protection from

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<sup>289</sup> Mohammad Alsultan, "The Perception of Organ Donation among Health-Care Providers in the Intensive Care Units at a Tertiary Center," *Saudi Journal of Kidney Diseases and Transplantation* 23, no. 4 (2012): 724, <https://doi.org/10.4103/1319-2442.98147>.

<sup>290</sup> Ibid.

violence. Initial permission of the deceased to donate organs had to be received from only a single relative.<sup>291</sup> The law and much of the medical standards and the methods used to diagnose brain death were derived basically from UK law.

### 3.16 The Muslim World and Deceased Organ Donation Today

The rate of organ transplantation, particularly for deceased donor's transplantation, is not as much in most Islamic countries. Several reasons for low transplantation and donation included the absence of state-funded training, awareness, absence of support and endorsement by the religious scholars, and lack of government interest in framing a proper framework.<sup>292</sup>

In North Africa, Tunisia is the main country with deceased organ donations. Among twenty-two Muslim majority states of sub-Saharan Africa, alive organ transplantation was implemented in Sudan and Nigeria.<sup>293</sup> In this area due to the lack of minimal facilities, and the strong opposition of Islamic scholars, the transplantation of deceased donors was not only non-existent but unlawful too.<sup>294</sup> Moreover, organ transplantation has not been a health priority because millions of people have experienced severe poverty in these countries and death from war, crime, infection, and malnutrition.<sup>295</sup>

Organ donation from deceased donors has been legalized in Egypt in 2010. However, this law had not yet been enabled due to ongoing religious controversy on the concept of brain death, and deceased-donors transplantation was uncommon in this country;

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<sup>291</sup> M. D .D Bell, "The UK Human Tissue Act and Consent: Surrendering a Fundamental Principle to Transplantation Needs," *Journal of Medical Ethics* 32, no. 5 (May 1, 2006): 283–86, <https://doi.org/10.1136/jme.2005.012666>.

<sup>292</sup> M. Hashim Kamali, "Principles of Islamic Jurisprudence," (Cambridge): Islamic Text Society, 2003), 351.

<sup>293</sup> SaadM AlShareef and RichardM Smith, "Saudi Medical Students Knowledge, Attitudes, and Beliefs with Regard to Organ Donation and Transplantation," *Saudi Journal of Kidney Diseases and Transplantation* 29, no. 5 (2018): 1115, <https://doi.org/10.4103/1319-2442.243963>.

<sup>294</sup> Ibid.

<sup>295</sup> S. Naicker, "Burden of End-Stage Renal Disease in Sub-Saharan Africa," *Clinical Nephrology*, January 12, 2011, <https://doi.org/10.5414/cnp74s013>.

transplantation operation included mainly living-donors kidney and liver transplantations.<sup>296</sup> Tunisia has had the highest incidence in North Africa of deceased-donors organ transplantations. Thirty out of 132 kidney transplantations (23%) were from deceased donors in 2010.<sup>297</sup> In Libya, transplantations are only from living donors.<sup>298</sup>

In Morocco Rate of living donors per million population was 0.4 and the rate of deceased donors transplantations was 0.1 per million population in 2011.<sup>299</sup>

Organ transplants were non-existent in Turkmenistan and Afghanistan in the seven Muslim countries of Central Asia. Uzbekistan, Kyrgyzstan, Kazakhstan, Tajikistan, and Azerbaijan had broad transplantation legislation but very limited systems for transplantation programs of deceased donors.<sup>300</sup>

Iran has banned transplantation maneuvers on strangers to avoid transplantation sightseeing and patients from these republics cannot be transplantation into Iran at present. Living-donors kidney transplantations have been conducted in entire six Muslim republics situated in South and Southeast Asia. In Pakistan, only five kidneys were procured locally from deceased donors. Subsequently fleeing the rule to halt organ trading in 2010 commercial transplantation successfully decreased but organ transplantation of deceased donors remained inexistent. In Indonesia, the most populous Islamic country, only one

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<sup>296</sup> Sherine Hamdy, "Not Quite Dead: Why Egyptian Doctors Refuse the Diagnosis of Death by Neurological Criteria," *Theoretical Medicine and Bioethics* 34, no. 2 (April 2013): 147–60, <https://doi.org/10.1007/s11017-013-9245-5>.

<sup>297</sup> H. Khalaf et al., "Donor Outcome after Living Liver Donation: A Single-Centre Experience," *Transplantation Proceedings* 39, no. 4 (May 2007): 829–34, <https://doi.org/10.1016/j.transproceed.2007.03.003>.

<sup>298</sup> Elmi Muller, Sarah White, and Francis Delmonico, "Regional Perspective Transplantation" 97, no. 10 (May 2014): 975–76, <https://doi.org/10.1097/tp.0000000000000144>.

<sup>299</sup> Ibid.

<sup>300</sup> Manyalich M, Perez B, Gomez MP, "International Registry in Organ Donation and Transplantation" IRODaT Web Site. Accessed September 11, 2020," [Www.Irodat.Org](http://www.Irodat.Org)

deceased-donors kidney transplantation was carried out, despite having the deceased organ donors Act.<sup>301</sup>

Malaysia has a large number of deceased organ donation programs and the legislative process is progressing continuously.<sup>302</sup> In 2012 eighty-one kidney transplantations were from deceased donors with seven liver transplantations.<sup>303</sup>

Albania was a member of the Western Eastern Muslim-majority Organization for Islamic Cooperation. Albania did not set up by 2012 but was far behind neighbouring, Balkan countries in donation and replacement of the organ its national kidney transplants.<sup>304</sup> The dead and vigorous organs are most shocking in Turkey, Iran, and Saudi Arabia.

The low substitution operations in Islamic countries were due, among others, to a lack of public education and understanding, a lack of acceptance and support by Islamic scholars, a lack of government infrastructure and financial means, a lack of brain dissolution, and legislation on organ transplantation.

Muslim republics can be broken up into three groups to adopt strategies to increase organ donation and transplants.

- (a) Public awareness needs to be raised in Turkey, Iran, Saudi Arabia, and Kuwait in countries that successfully implement transplantation services for the deceased.
- (b) Approval and support for Islamic scholars should be sought and public awareness raised in countries that have undeveloped programs for the

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<sup>301</sup> Behrooz Broumand and Francis L. Delmonico, 'Commendable Developments in Deceased Organ Donation and Transplantation in Iran,' *Transplantation Journal*, 96, No. 9 (November 2013): 765–66, <https://doi.org/10.1097/01.Tp.0000436099.27866.30>.

<sup>302</sup> Jeremy Chapman, Francis Delmonico, and Carl Groth, "Commentary: The World Health Assembly Resolution on Human Organ and Tissue Transplantation," *Transplantation*, 90, no. 3 (August 2010): 236–37, <https://doi.org/10.1097/tp.0b013e3181ebc0ea>.

<sup>303</sup> "20th Report of the Malaysian Dialysis and Transplant Registry." Malaysian Society of Nephrology, Accessed July 15 2020,"

<sup>304</sup> Ibid.

deceased, particularly in populated countries such as Indonesia, Egypt, Pakistan, and Bangladesh.

- (c) And the deceased transplant program is not a health priority in countries with extreme poverty, conflict, crime, and infection, i.e. Islamic countries, in Sub-Saharan Africa, and live-assisted kidney transplant services can be set up.

### **3.17 Middle East and Organ Transplantation Society**

Founded in 1987 as an international, non profit scientific society in Turkey, the Middle East Organ Transplant Society (MESOT) supports organ transplantation and collaboration among medical centres, communities, and public-private agency organizations in the Middle East. The organization, including Arab countries, Central Asia, Iran, Turkey, and Pakistan, comprises more than 29 countries. Organ donations are both kidney and liver donations that are more prevalent in the Middle East. Donors are usually genetically associated with receivers, but donations of commercial tissue are genetically unrelated. Because of the accident rate, penis donation in the Middle East is very much possible. However, the method has not always been used in many countries, because of the debate on the value of organ donation and transplantation on the notion of brain death and the lack of public attention.<sup>305</sup>

The fact that transplantation efficiency and demand for organs are limited and move in the opposite direction. This reduction has resulted in increased organ trafficking for facilitators, private hospitals, and scrupulous doctors, especially kidneys. High mortality rates and the difference between selling an organ and donation awards are the main issues.<sup>306</sup>

The Middle East and beyond, and the Islamic world, are also the subject of organ trafficking. International activity in human organs, especially kidneys, has flourished in

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<sup>305</sup> Shaheen FA. "Organ Donation in the Middle East Countries." *Ethn Dis.* 2009 Spring; 19(1 Suppl 1):S1-16-7. PMID: 19484868.

<sup>306</sup> Gruessner, Rainer W. G.; Benedetti, Enrico, "Living Donor Organ Transplantation." McGraw Hill Professional. (2008). P. 32. ISBN 9780071593304.

developed countries where non-living donor organs are inappropriate or accessible and there are noticeable differences in wealth. There are, for example, no or limited numbers of live transplant donors, and patients in the Persian Gulf countries (Saudi Arabia, Kuwait, Beharan, Qatar, United Arab Emirates, Oman) are reliance heavily upon weak, recruited, and resident donors. Human organs coming from countries such as India, Pakistan, the Philippines, the East, and China.<sup>307</sup> Several factors, including chronic hypertension, adult diabetes, nephritis, and infections, are damaged in the kidneys. As the waiting list for kidney transplants is so long, in addition to religious and cultural reasons, the only way to achieve them is usually a living donation by a partner, parent, family, or friend. It's done by the doer. Other people may want to purchase a kidney as an alternative. Transplantation from developed countries is moving more and more to less developed countries. Saudi Arabia's people are mainly going to India for organs. In India, there are hundreds of hospitals for kidney transplants.<sup>308</sup>

India has abundant kidneys to bring the extremely poor and helpless with doctors and brokers. The vast majority of the organ belongs to poor farmers, towns, power owners, manual laborers, and tiny daughters. They're sellers rather than donors. Buyers come from the Mediterranean States of Egypt, Kuwait, and Oman.<sup>309</sup>

We pay 500, 2,500 to 4,000 easily for a kidney and perhaps twice as much for operations. As China adopts an organ collection strategy from executed prisoners, China stands at the forefront of transplantation in the Pacific.<sup>310</sup> Since 1984, in China, the new law requires transplantation in executed prisoners' organs, if the prisoner agrees or no one came to claim the body.<sup>311</sup>

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<sup>307</sup> Marwan A. Masri et Al. 'Middle East Society for Organ Transplantation (MESOT), Transplant Registry' in *Experimental and Clinical Transplantation*, 2004, Vol. 2, No. 2, Pgs. 217-220.,"

<sup>308</sup> Ibid.

<sup>309</sup> Goyal M., Mehta RL, Schneiderman LJ, Sehgal, "A Economic and Health Consequences of Selling a Kidney in India." *JAMA* 2002; 288: 1589-1593.

<sup>310</sup> Carl Becker's, 'Money Talks, Money Kills—the Economics of Transplantation in Japan and China' in *Bioethics*. "1999, Vol. 13, No. 3/4, 236-243.

<sup>311</sup> Ibid.

Foreigners must not wait for organs to be delivered for days or weeks. The delivery can take time and more than enough time to satisfy customer needs. Most need transplants and go to China to get the organs of the executed prisoner.<sup>312</sup> Due to this unethical question, specialists play a major role in refusing or rejecting such cases.<sup>313</sup> Otherwise, they would become active partners in carrying out the effects of death instead of saving lives. In many poor countries in South America, too, the poor or their children are at risk of mutilating and killing their limbs.

The lack of public efficiency and legislation on transplantation of organs shifting to the private sector in Pakistan. Initially, the corresponding donors carried out the transplants directly. However, in several years commercially affiliated salaried donors were able to sell their kidneys for 1,000 and 2,000, taking advantage of the poor and needy in society. The majority of beneficiaries were locals.<sup>314</sup>

But by 2005, most of the rich purchasers came from western Pakistan, Middle East, and India. The purchasers are willing to pay 20,000 to 30,000 for the transplant and transplant package in the country, tourism has become an industry.<sup>315</sup>

### **3.18 Building A Foundation For Success; Best Global Practices In Deceased Organ Donation Legislation.**

Pakistan's legal and medical practices are not adequate as compared to other countries. A lot of countries around the world have implemented new, more effective organ donation policies. Pakistan may adopt various practices from various countries i.e.

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<sup>312</sup> Chelala, Cesar. 'Prospect of Discussions on Prisoners' Organs for Sale in China.' the Lancet 350, No. 9087 (November 1, 1997): 1307.

<sup>313</sup> Ibid.

<sup>314</sup> Syed Adibul Hasan Rizvi and Syed Ali Anwar Naqvi, "Commercial Transplants in Local Pakistanis from Vended Kidneys: A Socio-Economic and Outcome Study," *Transplant International* 22, no. 6 (June 2009): 615–21, <https://doi.org/10.1111/j.1432-2277.2009.00836.x>.

<sup>315</sup> Ghahramani, Nasrollah, S. Adibul Hasan Rizvi, and Benita Padilla. "Paid Donation: A Global View." *Advances in Chronic Kidney Disease*, 19, No. 4 (July 2012): 262-68.

- (a) Australia has had a complicated tradition of collecting organs from the deceased. As a result, an Australian National Reform Agenda of nine initiatives has recently been launched. It includes.<sup>316</sup>
- An integrated organ and tissue donation organization network, a new strategic and programmatic approach.
  - Hospital staff and organ donation services expert.
  - Adequate funding for hospitals.
  - Public recognition and training/education.
  - Ongoing education and awareness in society.
  - Donor family support
  - Transparent fair and free, National transplantation process
  - Public donation and transplantation network of the eyes and flesh

Thus, Pakistan too should take similar steps and encourage a more effective district, state, and national program of organ donation to create a robust network that promotes organ donation.

- (b) The United States established a private-sector network as part of the 1984 National Organ Transplantation Act, which includes the Organ Procurement and Transplantation Network (OPTN).<sup>317</sup> The United Organ Sharing Network (UNOS), which has operated in all eleven areas since 1986, has been the federal procurement, procurement, and transplant Network (OPTN).<sup>318</sup> The organ donation procedure of the dead donor can be interpreted as a variety of different types from the initial documentation of a potential donor organ to the organ transplant. Maximization of the ratio of the dead organ donors to

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<sup>316</sup> "Australian Government, Australian Organ and Tissue Donation and Transplantation Authority, *Annual Report 2017–18*," n.d.

<sup>317</sup> "National Organ Transplantation Act In Congress US, Editor. 1984."n.d.

<sup>318</sup> "Organ Procurement and Transplantation Network Final Rule. In *Services*, HaH Editor. 1998. p. 16296–336."

availability, efficiency, and effectiveness. This concept focuses heavily on improvement. (CMS) Medicare and Pharmaceuticals Center enables any potential donor of the organ in the hospitals to be recognized and referred to by the local agency procurement (OPO). "All patients who can be referred to OPO as one of the CMS-monitored indicators of success are called 'imminent death'"<sup>319</sup>

To make it more sustainable and workable, Pakistan should consider privatizing at least a part of the organ transplantation process. India will be best served in that way because it will make process management more effective. Besides, as seen above and in the case of Spain, the position of doctors and doctors working at the ICU is crucial and must therefore be followed to achieve fair results.

- (c) Spain has the world's highest deceased donors-34.4 pmp as reported in 2009, which means that for every million deaths, there were almost 34 people whose bodies were placed up for transplantation.<sup>320</sup>
- (d) Portugal is the second country to have hit a higher 30 pmp threshold<sup>321</sup>

### **3.19 Transplantation of Human Organs in the Light of World Health Organization 1991 Guidelines**

#### **Guiding Principle 1**

- Organs can be removed for transplantation from the deceased's body if:
- Obtain all contributions required by law; and
- There is no reason to suppose that without the deceased's formal approval in his lifetime the deceased objected to this deportation.

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<sup>319</sup> C. Rudge et al., "International Practices of Organ Donation," *British Journal of Anaesthesia*, 108 (January 2012): i48–55, <https://doi.org/10.1093/bja/aer399>.

<sup>320</sup> Ibid.

<sup>321</sup> Ibid.

### **Guiding Principle 2**

- Doctors who determine the death of a potential donor must not be directly involved in organ removal or subsequent transplantation and must not take charge of potential organ recipients.

### **Guiding Principle 3**

- Remove the organs from the deceased's body if possible. Adults who live may donate organs, however, but these donors generally have to be related genetically to beneficiaries. Bone marrow transplantation and other acceptable regenerating meat may be excluded.
- An organ can be substituted with the approval of the donors for removal from the body of adult donors. Donors should be free from unfair pressure to understand and weigh the risks, benefits, and impact of approval. Donors should be sufficiently knowledgeable.

### **Guiding Principle 4**

- For transplantation, no part of the alive minor's body should be removed. National legislation on regenerative organs/tissues may be subject to exceptions.

### **Guiding Principle 5**

- There must not be any commercial transactions involving the human body and its parts. Therefore, it should be prohibited to give or receive payment to organs (including other compensations or rewards).

### **Guiding Principle 6**

- It should be forbidden to publicize the need or availability of payment or the availability of organs.

### **Guiding Principle 7**

- Doctors and other health professionals should be prohibited from exchanging organs if there is reason to believe that the organs concerned are subject to business transactions.

### **Guiding Principle 8**

- No payment should be made for the justifiable fee for the services provided by any person or institution participating in organ exchange programs.

### **Guiding Principle 9**

- Donated organs should be made available to the sick, based on medical need, rather than on financial or other considerations, taking into account the principles of distributional justice and fairness.

## **3.20 Conclusion**

There is a clear need at the national, regional, and world level, for coordinated efforts to tackle illegal organ trafficking and cross-border tourism, apart from guide lines and declarations. The global approach requires learning from successful countries with innovative models and initiatives for regulated living conditions and the framework. The results will likely be achieved in the following efforts. As a strong dissuasive measure, strong action against organ exchange groups of developed countries which facilitate the exploitation of the poor in developing countries may be required. Although more complex, developed countries will have to debate whether individuals facilitating the purchase of organs for money in underprivileged countries will be prosecuted, perhaps at the social level. Governments in developing countries must also monitor the aggressive transposition of laws in order not to take advantage of the commercial practices of organs and criminal organizations. Perhaps it is time to issue clearly defined codes of behaviour for healthcare institutions and the role of professional donors and replacement of non-regulated paying organs in various

international and national medical institutions. The primary responsibility of the physician is the security of the donors and the recipient. The state and professional societies must be held accountable. All the health care providers must refuse to cooperate to promote or facilitate organisms unless, following the appropriate informed consent procedure, they are clearly and independently justified and certified as "voluntary" and "non-coercive." Finally, the physicians and substitutes have a responsibility to ensure that the organs replaced by them are made according to the highest standards of medical ethics in their knowledge.

In Pakistan, transplantation is gradually gaining acceptance as a successful treatment for advanced organ failure. Over the last two decades, society has been motivated to make donations and support transplants if they are available to all who require them but cannot afford them. Controlling the black market of organ commercialism in developing countries requires legislation. It is possible to implement it incorrectly, but as our country has demonstrated, it is a powerful deterrent. Many countries are moving to an organ transplant system that is aligned with the WHO guiding principles and the Istanbul Declaration in terms of practise and ethics, but which has powerful actors within their society even from a national interest standpoint.

## **CHAPTER 4: BALANCING COMPASSION AND REGULATION: THE ETHICS OF DECEASED ORGAN DONATION**

### **4.1 Introduction**

The process of organ procurement and transplantation from deceased donors is a complex and sensitive issue that raises a multitude of ethical considerations, particularly from a moral and religious perspective, as the act of donating and receiving organs from deceased individuals involves a delicate balance between respecting the deceased and saving the lives of those in need. This chapter examines, what are the ethical considerations involved in deceased organ donation and how do they impact the process of organ procurement and transplantation from a moral and religious perspective? This chapter illuminates the ethical perspective of deceased organ donation in terms of its core perspective and objective of donation that is altruism, humanism consent and ownership in human body. Altruism emphasizes the idea that donating one's organs after death is a selfless act of kindness towards others. This study also objectify and highlights the positive impact that organ donation can have on the lives of others and the importance of considering the well-being of others, even after one's own death. The ethical perspective of humanism, on the other hand, emphasizes the value and agency of human beings, both individually and collectively. In the context of deceased organ donation, this perspective may focus on the idea that every individual has the right to make informed decisions about their own body and that organ donation should be a choice made freely and voluntarily. Consent is another important ethical perspective in the context of deceased organ donation. This perspective emphasizes the importance of obtaining the informed consent of the individual or their next of kin before proceeding with organ donation. This helps to ensure that the decision to donate is made voluntarily and with a full understanding of the consequences. The concept of ownership in

the human body is also relevant in the context of deceased organ donation. Some may argue that the body belongs to the individual and that they have the right to make decisions about what happens to it after death. Others may argue that the body is a gift from society and that individuals have a duty to use it to help others. The ethical perspective of deceased organ donation encompasses a range of philosophical views, including altruism, humanism, consent, and ownership in the human body. It is important to consider these perspectives in order to ensure that the decision to donate is made in an ethical and responsible manner, and that the rights and well-being of all parties involved are respected and protected

A comparative analysis of both western and Islamic concept will be highlighted in this chapter. The scope of informed and presumed consent has been explicated. It also shed light upon death and death determination using neurological criteria, occurrence of death in case of any vital organ failure.

## **4.2 Altruism**

The principle of altruism, first articulated by the French philosopher Auguste Comte in the early 1800s, is defined as an unwanted and unselfish concern for the well-being of others.<sup>322</sup> Many people who have no connection to the actor benefit from the actor's consideration and actions. Individuals' motivations for altruism differ. It could be faith, profession, character, self-awareness, emotion or motivation. To date, numerous notions of self-sacrifice have been proposed, focusing on the origins of humane behaviours. Six prevalent hypotheses are selfless character, global moral ideals, individual beliefs, the process of apprehension, treatment morals and the concept of empathy-altruism. The altruistic view of personality assumes that early life experiences lead to a desire to behave unselfishly.<sup>323</sup>

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<sup>322</sup> Katrina Bramstedt and Rena Down, *The Organ Donor Experience: Good Samaritans and the Meaning of Altruism* (Lanham, MD: Rowman & Littlefield Publishers, 2011), 1-3,

<sup>323</sup> Ben Saunders, '*Altruism or Solidarity? The Motives for Organ Donation and Two Proposals*,' *Bioethics* 26 No. 7 (September 2012): 377-379.

The second concept of universal moral principle states that individuals behave well when they adhere to a set of general moral values. Some individuals establish their expectations for doing the right thing or for the good of others as their internal principle of private value, and then act accordingly. In the concept of relational mechanisms, care is the driving force behind any prudent action. This process consists of three parts: the input of pain, the change in feeling and emotion and the Lord's process. Destiny, according to this viewpoint, requires a reason to occur. After all, extremism is the antidote to morality. This concept is only applicable to health-care workers. Extremism stems from the last concept, empathy, which is the sympathetic contemplation of the needy in the presumption of greatness. The application of this concept appears to be the most common.<sup>324</sup>

When acting out of altruism to promote the well-being of others, the individual will minimise personal stress, avoid feeling guilty or avoid making others think unfavourably about not providing support and gain private benefits such as pride or satisfaction. Worship is about reaching new heights and is often referred to as the riches of life.<sup>325</sup>

This principle fits well in a medical bequest in general and organ bestowment in particular because its substance accomplishes the basis of selflessness. Empathy refers to feelings, ideas, or behaviour toward others, whereas altruism refers to the care or commitment of someone to the welfare of others. In terms of moral imperative of healthy and generous exercise, Authenticity in medical aid, on the other hand, is usually distinct from hostility. In a similar vein, the donors' intentions must be morally sound. As a result, sensitive or affective naturalistic motivations are not considered moral measures in the organs. In his book *The Gift Relationships*, Professor Richard Tatem examined the relationship between brotherhood and social policy in the 1970s. He concludes that the health-care system should

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<sup>324</sup> Steinmann, "Altruism Reconsidered: Exploring New Approaches to Property in Human Tissue", 13-19.

<sup>325</sup> Bramstedt, Katrina A., and Rena Down. "The Organ Donor Experience: Good Samaritans and the Meaning of Altruism". Lanham, MD: Rowman & Littlefield Publishers, 201,"

be free of advertising in order to function properly and provide the ability to practice prudence. Naturalism, in his opinion, is a social contract, and human rights are founded on generosity.<sup>326</sup> Suppress healthcare commodities, thereby resulting in suffocation of human rights to health-related care. Market and non-market systems are unlikely to coexist because one always outperforms the other. According to the Times, marketing discourages individualism and prevents people from passing up 56 opportunities. As a result, societal bonds are shattered. Simply, foundation of generosity is based on trust. The two-way moral principle of donation holds true for both donors and recipients. A philanthropic bestowment occurs when three conditions are met by the act. First, the act is not intended to benefit anyone other than those in need. Second, the act is free of obligation for both the donors and the recipients. Donors, whether intimate associates or chaps, may feel obligated to save the lives of their precious ones when it comes to organ donation, for example. While the donation will be remembered only if it lacks the purpose of supremacy with a cloudy decision, this duty can go beyond greatness and begin this process. As a result, the healthcare team must establish donor goals in order to avoid any donation that is based on coercion rather than authenticity. Such cases may also be dismissed by the opposing party. Third, the Act emphasizes shared deliberation, allowing both donors and recipients to recognise protection and personal rights.<sup>327</sup>

Altruism is a traditional ethic that is both universal and personal. Altruism is a specific morality when its principles necessitate special skills, or when specialists or educators clarify when moral standards align with religious norms. In the case of organ donation, altruism should be regarded as a fundamental common morality because it is

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<sup>326</sup> Ibid.

<sup>327</sup> Shawn H.E. Harmon, "Altruism Reconsidered: Exploring New Approaches to Property in Human Tissue," *European Journal of Health Law* 18, no. 4 (2011): 461–65, <https://doi.org/10.1163/157180911x585315>.

recognised by all cultures; it is embraced and should be practised by all members of a community.<sup>328</sup>

This understanding contributes to the development of a mutually beneficial strategy that prevents the erosion of public trust. From the above discussion it can be easily concluded that: As medical and pharmaceutical procedures advances, organ donation practitioners must address more ethical barriers i.e. how do we reconcile Selfishness with the needs and interests of others?<sup>329</sup>

Organ scarcity and organ donation should be addressed as public health issues. The goal of public health is to improve public well-being, reduce inequality, and reduce and eliminate harm. Public health issues should be appropriately identified and incorporated into the cultural and social norms of the specific group. There are several approaches to address ethical issues in public health, including utilitarianism, populism, Parenthood, and sectarianism. No value must take precedence over other values in the practise of communal well-being morals.<sup>330</sup>

The regularity of justice according to utility theories includes full social welfare. Utilitarianism is a philosophy of neutrality. Regardless of the changes in people, the only intend and aim is to improve the welfare of the populace. In these theories People or distinct groups of people are not preferred. If the majority of the population benefits maximally, but some people lose money or are otherwise harmed, then this action is acceptable. Simply put, utility regardless of how the goal of maintaining and promoting population health is achieved. The useful philosophy is inapplicable in this case because it does not provide a reliable shield for separate rights. The communal usefulness determines whether a person receives a reward

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<sup>328</sup> Dana J. Lawrence, "The Four Principles of Biomedical Ethics: A Foundation for Current Bioethical Debate," *Journal of Chiropractic Humanities* 14 (January 2007): 34–40, [https://doi.org/10.1016/s1556-3499\(13\)60161-8](https://doi.org/10.1016/s1556-3499(13)60161-8).

<sup>329</sup> Russell Shafer-Landau, "Book Review Mark Timmons, *Morality without Foundations: A Defence of Ethical Contextualism*." New York: Oxford University Press, 1999. Pp. 269. \$49.95 (Cloth).," *Ethics* 111, no. 4 (July 2001): 826–30, <https://doi.org/10.1086/233587>.

<sup>330</sup> Laura Siminoff and Kata Chillag, 'The Fallacy of the Gift of Life', 31-35.

or a burden, as well as how much one receives for the highest virtue. Utilitarianism seeks to create the greatest usefulness, regardless of the circumstances of the society's members, and to make it a neutral procedure.<sup>331</sup>

The best way to achieve its overall result is negligible, and there is no guarantee of fair rights, according to this philosophy. If utilitarian ideologies are applied to organ donation, the well-being of the people is sacrificed at the expense of the weak, such as encephalitis patients, new born, and chronic plants.<sup>332</sup> Furthermore, it is unavoidable to adopt utilitarian policies devoid of paternalism in order to achieve the goal of optimising value for societies, all of which is focused on outcomes rather than applying means. Utilitarianism would not be successful without paternalism; therefore, paternalism is unlikely to be justified by violating human rights in the absence of utilitarianism. The application of the philosophical principle of utilitarianism in public health is a central issue in policy and practise, a moral issue between individual rights and community gains.<sup>333</sup> Libertarian philosophies, on the other hand, grant people more freedom by emphasising individual rights and freedom. The theories are about respecting one's own autonomy. It is a fair distribution as long as the individual chooses to distribute freely. The advantages and disadvantages are shared. Individuals have the right to reflect on their own actions and well-being. Lawyers have missed an important point for this segment, which is that people are unlikely to be disconnected from their group, and individuals will frequently communicate with their

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<sup>331</sup> Satel, Sally L. "When *Altruism Isn't Enough: The Case for Compensating Kidney Donors.*" 1st ed. Washington, D.C.: AEI Press, 2009.

<sup>332</sup> Michael Da Silva, "Paternalism: Theory and Practice," Christian Coons and Michael Weber, Editors Cambridge: Cambridge University Press, 2013; 290, *Dialogue* 53, no. 3 (February 11, 2014): 579–81, <https://doi.org/10.1017/s0012217314000134>.

<sup>333</sup> Stephen Peckham and Alison Hann, "General Practice and Public Health: Assessing the Impact of the New GMS Contract," *Critical Public Health* 18, no. 3 (September 2008): 347–56, <https://doi.org/10.1080/09581590802178028>.

groups. In this way, community, culture, or society influence cannot be ignored on individual thought.<sup>334</sup>

Libertarianism justifies tips for selling organ markets or other types of organs. Nonetheless, for any interested party, organ exchange presents more difficult problems than the significant benefit of a temporary increase in limb reduction. The liberal solution is not appropriate for organ donation. Paternalism is a strategy that imposes coercion on individuals in order to change their thoughts and actions in order to mitigate the negative effects. Motherhood's most expensive solution was rooted in the evolution of public health challenges. For example, the necessary immunisation has prevented a large number of deaths. In 1947, thousands of people died as a result of a smallpox outbreak in New York and elsewhere; after the immunisation programme was implemented, there were only four deaths.<sup>335</sup> However, paternalism is evident. As a public health problem, organ transplantation should be the least preferred solution that does not necessitate immediate intervention because it poses no significant harm to public health and undermines human sovereignty and dignity.<sup>336</sup>

Communism, on the other hand, emphasises shared accountability between society and the individual.<sup>337</sup> Communitarianism does not distinguish between societal and individual functions and incorporates and combines individual interests and civic welfares.<sup>338</sup> It emphasises the protection and advancement of communal health without interfering with individuals' rights. Individual values and beliefs are accepted and preserved because the

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<sup>334</sup> Bramstedt, Katrina A., and Rena Down. *The Organ Donor Experience: Good Samaritans and the Meaning of Altruism*. Lanham, MD: Rowman & Littlefield Publishers, 2011. p 11-20.

<sup>335</sup> Felix Warneken and Michael Tomasello, "The Roots of Human Altruism," *British Journal of Psychology* 100, no. 3 (August 2009): 455–71, <https://doi.org/10.1348/000712608x379061>.

<sup>336</sup> Shafer-Landau, Russ. *The Ethical Life: Fundamental Readings in Ethics and Moral Problems*. 3rd Ed. New York: Oxford University Press, 201.

<sup>337</sup> Beauchamp, Tom L., and James F. Childress. *Principles of Biomedical Ethics*, 7th Ed. New York: Oxford University Press, 2012, p, 249-350,

<sup>338</sup> Peckham, Stephen, and Alison Hann, "Public Health Ethics and Practice," ed. Stephen Peckham and Alison Hann (Policy Press, 2009), <https://doi.org/10.1332/policypress/9781847421029.001.0001>.

group members are exposed to the social and cultural traditions of communitarianism. Furthermore, communitarianism, like any other group approach, is also a personalised approach.<sup>339</sup> Communalism is a universal approach to public health that works for any individual group by focusing moral thinking primarily on sectarian virtues and standards. The effectiveness of public health policy demonstrates how, in the absence of repression, the policy effectively transforms civic behaviour into public standards. Researchers in human rights and morals must strike a balance between individual and sectarian rights. The biotech debate cannot be avoided if human rights are to be protected. The most important priorities of bioethics are the protection of as many human rights as possible. That is, however important to know that how bioethics considers and determines the terrain for human rights it contains.<sup>340</sup> In this regard, unlike medical ethics-derived bioethics, Potter's bioethics provides a further defence of human rights for its large image and artefacts. In Potter's concept of bioethics, biological awareness protects human principles and the future. In other words, the future civilization is based on the ethics of using biological intelligence. Potter's concept is more important and rational in terms of human rights from another perspective, because human rights include all values that each person retains throughout their lifetime, not just health care rights. Every person has the right to health care.<sup>341</sup>

Altruism is compelling argument of this research study and for supporting deceased organ donation as it emphasizes the importance of putting the needs of others before one's own. Theoretically, altruism is based on the idea that individuals are motivated by the desire to help others, without any expectation of personal gain or reward. In the context of organ donation, this translates to a willingness to donate one's organs after death in order to save or improve the lives of other. Altruism may also be interpreted as having a moral duty or

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<sup>339</sup> Ibid, Pg. 162.

<sup>340</sup> Ten Have, *The Sage Handbook of Health Care Ethic*, London; sage publications ltd, 2011, Pg, 32.

<sup>341</sup> Van Rensselaer Potter, "Bioethics, the Science of Survival," *Perspectives in Biology and Medicine* 14, no. 1 (1970): 127–153, <https://doi.org/10.1353/pbm.1970.0015>.

responsibility to aid others. In the case of deceased organ donation, it is a way to help those in need and give something back to the community. This moral obligation to donate organs can help remove some of the common obstacles to donation, including fear, ignorance, and mistrust.

Moreover, altruism can also be seen as a way to promote a culture of generosity and compassion in society. By encouraging organ donation, we can help to create a more compassionate and caring community, where people are willing to help others in need and work together for the greater good. This can help to foster a sense of social responsibility and contribute to a more harmonious and cohesive society.

In nutshell, the altruistic perspective on deceased organ donation offers a compelling argument for supporting this important cause. By emphasizing the importance of putting the needs of others before one's own, altruism can help to overcome barriers to donation, promote a culture of generosity and compassion, and fulfil a moral obligation to help others. These arguments can be used to support the development of legislation and policies that encourage and support organ donation in a responsible and ethical manner.

### **4.3 Consent**

The democratic society began to focus on human freedom and autonomy in law and medicine during the 1960s, thus it can easily be marked as an era of consent as it was recognised during this time.<sup>342</sup> The term consent is usually defined as a voluntary agreement to another's proposition, and it has gained prominence in recent years.<sup>343</sup> Alternatively, to agree voluntarily to another's act or proposal.<sup>344</sup> It can also be described as a subject that is

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<sup>342</sup> Applebaum PS, Lidz CW, Meisel A, "Informed consent: legal theory and clinical practice", New York: Oxford University press 1987

<sup>343</sup> *West's Encyclopaedia of American Law, edition 2.* "consent." Retrieved August 11 2020, from <https://legal-dictionary.thefreedictionary.com/consent>

<sup>344</sup> *Collins Dictionary of Law. S.v.* "consent." Retrieved August 11 2020 from <https://legal-dictionary.thefreedictionary.com/consent>

the result of a concept and regulatory agreement.<sup>345</sup> A person with sufficient mental capacity to make an intelligent decision shows consent by performing an act that has been recommended by another.<sup>346</sup> Consent entails a physical ability to act as well as a deliberate, focused, and unencumbered exercise of those abilities.<sup>347</sup> The convergence of several variables has generated consent.<sup>348</sup> Assent and charitableness are basic beliefs of organ gifts.

The nature of religious, political, legal and medical views changed as laws and new procedures in medicine evolved. The law established the right to physical integrity and the ability to choose whether or not to have one's body altered. The law considers it a battery which runs the machine, if there is no consent then the required medical procedures cannot be performed in organ donation. The act performed will be considered as negligence and unlawful in absence of consent.<sup>349</sup> A review and description of the risks, benefits and alternatives are some of the specific consent provisions.<sup>350</sup>

As Tom L. Beauchamp,<sup>351</sup> and James F. Childress,<sup>352</sup> pointed out, the history of consent is centred on the concept of autonomy: "A decision is autonomous if it is based on the individual's principles and beliefs, it is based on sufficient knowledge and understanding, and it is not compelled by internal or external constraints."<sup>353</sup>

It is unlikely that a Muslim patient will have complete autonomy; he or she must feel a sense of obligation to Allah, and he or she must live in social cohesion in which the role of

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<sup>345</sup> The Society, the Barriers to Organ Donation and Alternatives for a Change Félix Cantarovich, ch 4

<sup>346</sup> John Bouvier. S. V, *A Law Dictionary, Adapted to the Constitution and Laws of the United States*. "Consent." Retrieved August 11 2020 from <https://legal-dictionary.thefreedictionary.com/consent>

<sup>347</sup> Ibid.

<sup>348</sup> Ibid.

<sup>349</sup> Peter B. Terry, "Informed Consent in Clinical Medicine," *Chest* 131, no. 2 (February 2007): 563–68, <https://doi.org/10.1378/chest.06-1955>.

<sup>350</sup> Ibid.

<sup>351</sup> He was born in 1939 is an American philosopher specializing in ethical philosophy, bioethics. He is Professor Emeritus of Philosophy at Georgetown University.

<sup>352</sup> He is, Professor of Ethics and Religious Studies at University of Virginia.

<sup>353</sup> Beauchamp, Tom L., and James F. Childress. *Principles of Biomedical Ethics*. 7th Ed. New York: Oxford University Press, 2012, P , 249-350,"

the imam and relatives are important.<sup>354</sup> As a result, autonomy is realized in terms of social meaning and religious beliefs. According to PR Del Pozo<sup>355</sup> and JJ Fins, consent recognises personal rights in the same way that we understand Islamic law, values, blood, money and family privacy. They also point out that communication is an important part of consent, and that Muslim patients have access to information outside of the usual channels of doctor-patient contact."<sup>356</sup> Consent must be obtained in a culturally sensitive manner, and increased awareness is the first step toward appropriate communication that respects the patient's values. Respect for autonomy necessitates a better understanding of cultural values and behaviours.<sup>357</sup>

Organ assent can be given orally or in writing by the deceased before his or her death, or by a third party, usually a close relative or acquaintance.<sup>358</sup> According to J A Carrese,<sup>359</sup> and J Sugarman<sup>360</sup>, learning about deceased organ donation should be done with "cultural modesty, which begins with self-confidence, self-reflection, and self-criticism." "<sup>361</sup>

Presumptive consent, also known as opt-out, and informed consent, also known as opt-in, are the two types of legislation currently in place around the world for organ donations.

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<sup>354</sup> Westra AE, Willems DL, Smit BJ. "Communicating with Muslim Parents: The Four Principles Are Not Culturally Neutral as Suggested', *Eur J Pediatr*. 2009; 168:1383-87,"

<sup>355</sup> He commands and specializes in bioethics and writer of many scholarly books and articles on ethics.

<sup>356</sup> DelPozo PR, Fins JJ, "Islam and Informed Consent: Note from Doha", *Camb Q Healthc Ethics*. 2008; 17:273-79. <http://dx.doi.org/10.1017/S096318010808033> , Accessed 28 July 2020,

<sup>357</sup> Ibid.

<sup>358</sup> A Systematic Review of Presumed Consent Systems for Deceased Organ Donation , 2008 Department of Health Appendix I University of York, Organs for Transplants: A Report from the Organ Donation Taskforce January Available from [http://www.dh.gov.uk/En/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_082122](http://www.dh.gov.uk/En/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_082122) (Accessed 3 August 2020),

<sup>359</sup> Professor of medicine at John Hopkins University.

<sup>360</sup> Jeremy Sugarman is an American bioethicist and physician, Professor of medicine at John Hopkins University

<sup>361</sup> Carrese JA, Sugarman J. "The inescapable relevance of bioethics for the practicing clinician". *Chest*. 2006 Dec;130(6):1864-72. doi: 10.1378/chest.130.6.1864.

### 4.3.1 The Consent Theory and Its Implications for Deceased Organ Donation

The theory of consent refers to the idea that individuals should have the right to make informed and voluntary decisions about what happens to their bodies, particularly in relation to medical procedures or interventions. This theory has important implications for the practice of deceased organ donation, which involves taking organs from individuals who have passed away in order to transplant them into other people who need them.<sup>362</sup>

In the case of deceased organ donation, consent is typically obtained either through a person's prior decision to register as an organ donor or through the consent of their next of kin or legal representative. In order for this consent to be considered valid, it must meet certain criteria, such as being voluntary, informed, and free from coercion or pressure.<sup>363</sup>

One of the challenges of obtaining consent for deceased organ donation is that it often relies on the decision-making of individuals or their families during a time of grief and stress. This can make it more difficult for individuals to make informed and voluntary decisions about organ donation, particularly if they are not familiar with the process or do not have strong feelings about it one way or another.<sup>364</sup>

To address this challenge, there are a number of initiatives aimed at increasing public education and awareness about deceased organ donation, as well as improving the process of obtaining consent. For example, some countries have introduced opt-out systems for organ donation, in which individuals are presumed to be willing to donate their organs unless they explicitly opt out.<sup>365</sup>

Overall, the theory of consent is an important framework for understanding the ethical considerations around deceased organ donation. By ensuring that individuals and their

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<sup>362</sup> Madden S., Collett D., Walton P. The Effect on Consent Rates for Deceased Organ Donation in Wales after the Introduction of an Opt-out System. *Anaesthesia*. 2020; 75:1146–1152 [PubMed]

<sup>363</sup> Ibid.

<sup>364</sup> Ibid.

<sup>365</sup> Ibid.

families are able to make informed and voluntary decisions about organ donation, we can help to ensure that this practice is conducted in an ethical and respectful manner.

#### **4.4 Scope of "Opt-in" Informed Consent and "Opt-Out" Presumed Consent**

Informed consent, also known as "opt-in," is explicit and described as consent which is granted by a person who has volunteered himself for organ donation after death. People who want to donate organs can do so by filling out an organ donation registration form. Consent is extremely important in biomedical ethics. Informed consent guidelines for both therapy and research involving human subjects are included in the uniform Anatomical Gift Act.<sup>366</sup>

Presumed consent is defined as "the assumption that a particular action would have been approved by a person or party if permission had been sought" in the medical dictionary."<sup>367</sup>

For organ donation, presumed consent is thought to be the best system. The resident is told that his failure to register as a non-contributor implies that he is still a benefactor/donor in more rational and practical terms.<sup>368</sup>

The rise in donations is seen as a strong indicator of institutional development in Spain and Italy, rather than the result of assumed assent. In France, a person is presumed to have agreed to the 1976 "Caillavet Law."<sup>369</sup> Whether or not he or she ever explicitly told close relatives. Because there was no unified framework in France to organise people's wishes, the Caillavet law was not consistently applied in French emergency clinics. However,

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<sup>366</sup> A Rithalia et al., "A Systematic Review of Presumed Consent Systems for Deceased Organ Donation," *Health Technology Assessment* 13, no. 26 (May 2009), <https://doi.org/10.3310/hta13260>.

<sup>367</sup> Segen's Medical Dictionary. S.v. "Presumed Consent." Retrieved August 11 2020 from <https://Medical-Dictionary.thefreedictionary.com/Presumed+Consent>.

<sup>368</sup> Miller, Franklin G, Alan Wertheimer. *The Ethics of Consent: Theory and Practice*. Oxford: Oxford University Press, 2010."

<sup>369</sup> This has been the case since the Loi Caillavet ('Caillavet Law') was passed in 1976, making everyone an organ donor except for those who have explicitly refused, as well as minors and those under someone else's guardianship (such as the mentally disabled).

under the new legislation in France, whether or not a person is registered as an organ benefactor, his or her organ is still acquired, even if the family does not want it. Spain is frequently cited as the best and most positive example of assumed assent. In Spain, however, the closest relative also has veto power. Much of the increase in donation rates occurred after the presumed consent law was passed. It's difficult to say whether the assumed assent will approve or disapprove of explicit social practises.

The law of presumed consent has no significant impact on the general public's attitude toward organ donation.<sup>370</sup> It's also worth noting that, despite the law, family consent is still required and obtained.<sup>371</sup> Finally, when it came to the effectiveness of consent legislation, we came to the conclusion that few laws could change people's moral and ethical behaviour.

#### **4.5 Scope of Consent (Ikhtiyār) In Islam**

Islam considers one's free will and consent to be extremely important and paramount,<sup>372</sup> grant of consent concept in Islam can be exemplified from precedence of consent granted in matters such as business transactions, marriages and the use of diyah.<sup>373</sup>

Consent is seen as an essential element that must be obtained before any medical treatment procedure.<sup>374</sup> Before the medical care is completed, a doctor has an obligation to obtain his patient's assent from the phase of prompting the patient of the material risks. Only medical care is considered to have been legally performed if permission is granted in accordance with Shariáh's requirements.<sup>375</sup>

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<sup>370</sup> Eric J. Johnson and Daniel G. Goldstein, "Defaults and Donation Decisions," *Transplantation* 78, no. 12 (December 2004): 1713–16, <https://doi.org/10.1097/01.tp.0000149788.10382.b2>.

<sup>371</sup> "Erin CA, Harris J, "Presumed Consent or Contracting Out. *Journal of Medical Ethics*". 1999; 25(5):365-366.

<sup>372</sup> Salih Ibn Fawzan Ibn 'Abd Allah Fawzan, "A Summary of Islamic Jurisprudence ", Al -Mulakhkhas Al-Fiqhi, Vol. 2 (Riyadh, Saudi Arabia: Al- Maiman Publishing House, 2012)P.548.

<sup>373</sup> Refers to Blood-Money Which Is Paid as a Compensation to the Victim or His Family for Murder or Wounds Caused by the Offender.

<sup>374</sup> Salih Ibn Fawzan Ibn 'Abd Allah Fawzan, "A Summary of Islamic Jurisprudence," Al -Mulakhkhas Al-Fiqhi, Vol. 2 (Riyadh, Saudi Arabia: Al- Maiman Publishing House, 2012)P.548.

<sup>375</sup> Ibid.

## 4.6 Under Shari'ah, a Legally Valid Consent is required

When someone does something voluntarily without being forced or coerced, they are said to have given their consent. Muslim jurists have identified three key elements that must be met in order for consent to be legally valid. Detail description of these three key elements is given in following paras:

### 4.6.1 (Niyah) Intention

All actions are guided by the principle of intention. An act cannot be completed if there is no intention in one's heart and mind. The Prophet emphasised the importance of intention in one famous hadith narrated by Caliph Umar Al-Khattab:<sup>376</sup> "The intentions are considered by the deeds, and a person will receive the reward according to his intention."<sup>377</sup>

In Islam, the concept of intention is so important that if one sets his intention to do a good deed, he is rewarded for having such intention even if the act has not yet been done or cannot be done for some reason. However, if one sets evil intentions, such as committing a crime, he will not be sinned against or punished for doing so until the crime is committed. Other scholars, such as Al Baydawi,<sup>378</sup> and Ibn Nujaym,<sup>379</sup> has further explained and enumerated the concept of intention, stating that it is the purpose of doing something with the ultimate goal of obeying Allah S.W.T and being close to Him so as to be blessed on the Day of Judgment. The heart's expression of such intention is fundamentally about manifesting benefits and suppressing harms, whether immediate or delayed. The intention is defined in Shari'ah as the desire to do something for the pleasure of Allah S.W.T.

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<sup>376</sup> Umar ibn al-Khattāb also spelled Omar, was the second Rashidun caliph, reigning from 634 until his assassination in 644.

<sup>377</sup> Ibnu Taimiyah, "Majmu 'Ah Al-Fatawa Shaikh Al-Islam," Riyadh: Matabi 'Riyadh 32, No. 110 1963.

<sup>378</sup> Qadi Baydawi (also known as Naṣir ad-Dīn al-Bayḍawī, June 1319, was a Persian jurist, theologian, and Quran commentator. He lived during the post-Seljuk and early Mongol era. Many commentaries have been written on his work. He was also the author of several theological treatises.

<sup>379</sup> Muḥammad Ibn Nujaym (926–69 or 970/1520–63) was an eminent Egyptian jurist of the Ḥanafī School of Islamic law.

#### 4.6.2 Free Will (Iradah)

When someone intends to do something, he has the power to do it and carry it out. Freewill is a sub-component of intention, and it requires the presence of an intention to exist. Both can be linked as “in absence of intension will cannot come in to existence, no intention, no will”. A will, according to Al Asfahani,<sup>380</sup> is a force consisting of desire, need and hope to commit an act when one's soul yearns to do something and has the ability to carry it out. In other words, if one has the iradah, he will make the necessary efforts to achieve his goal.<sup>381</sup>

#### 4.6.3 Choice (Khiyar)

When confronted with multiple options, the choice is the preference made. A decision can also be referred to as a choice. Allah says in the Quran to the effect that,

“وَلَقَدْ اخْتَرْنَاهُمْ عَلَىٰ عِلْمٍ عَلَىٰ الْعَالَمِينَ”

*“And We certainly choose them by knowledge over all the other worlds”<sup>382</sup> This verse describes Allah's decision to choose the children of Bani Israel and save them from Pharaoh's cruelty. Allah says in another verse:*

“وَرَبُّكَ يَخْلُقُ مَا يَشَاءُ وَيَخْتَارُ ۗ مَا كَانَ لَهُمُ الْخِيَرَةُ ۗ سُبْحَانَ اللَّهِ وَتَعَالَىٰ عَمَّا يُشْرِكُونَ”

*“And your Lord creates whatsoever He wills and chooses, no choice do they have in the matter.”<sup>383</sup>*

Muslim jurists engaged in a lengthy debate about choice. The first is by al Bazdawi, who claims that Ikhtiyar means intending on an undecided matter that is between existence and non-existence and within a person's capacity to perform, and that he later made his

<sup>380</sup> Was an eleventh-century Muslim scholar of Qur'anic exegesis and the Arabic language

<sup>381</sup> Ibnu Al-Qayyim Al-Jauziyyah, "I'laam Al-Muqi'ien Min Rabbi Al-A'lamin," vol. 3 (Cairo: Darul Al-Kutub Al-Ilmiah, 2002). P. 91.

<sup>382</sup> The Quran, Al Dukhan, 44:32.

<sup>383</sup> Ibid, Al Qasas, 28:68.

choice by favouring one decision over the other.<sup>384</sup> Ibn Abidin has given it a very simple meaning, which is to intend and desire something.<sup>385</sup> Ikhtiyar was defined by the jamhur (majority) of jurists as the intention to do something over anything else with pure will.<sup>386</sup> The opposite of coercion is pure will. The words consent and coercion are inherently incompatible. In general, a contract cannot be implemented without the consent and choice of the parties.

#### 4.7 Death

Death, according to Islam, is the separation of the soul from the human body.<sup>387</sup> The Qur'an defines this phenomenon in the following verse.

"وَهُوَ الْقَاهِرُ فَوْقَ عِبَادِهِ وَيُرْسِلُ عَلَيْكُمْ حَفَظَةً حَتَّىٰ إِذَا جَاءَ أَحَدَكُمْ الْمَوْتُ دَنَا لَا يَفِرُّونَ وَفَنَّهُ رُسُلُنَا وَهُمْ"

*"He is the supreme Master over His subjects. He sends out guardians to watch over you till, when death overtakes any of you, those sent by Us take his soul—and they never fail in their duty."*<sup>388</sup>

Death, according to this perspective, is a hypothetical miracle that cannot be verified through empirical observation. The flow of vital fluids (blood) in the frame called body is known as life and that flow stops the body is declared as corp. On the other hand, life and death were correlated by primitive Islamic thinkers with the occurrence of the soul and its

<sup>384</sup> Ibnu Al-Qayyim Al-Jauziyyah, "I'laam Al-Muqi'ien Min Rabbi Al-A'lamin," Vol. 3 (Cairo: Darul Al-Kutub Al-Ilmiah, 2002). P. 91.

<sup>385</sup> Muhammad Bin Muhammad Al-A'bdari, "Al-Madkhal," Dar al Fikr, Beirut 4 (1981): 195–96.

<sup>386</sup> Dr. Salamah Abdul Fattah Hulaibah, "Ahkam A'qd Al-I'lj Baina Al-Fiqh Al-Islami Wa Al-Qanun Al-Madani Al-Misri Wa Al-Faransa." P. 249- 256.

<sup>387</sup> Encyclopaedia of Islamic Jurisprudence. Kuwait: Ministry of Islamic Affairs Kuwait, 1988–2006.

<sup>388</sup> Al Quran, Al Anam, 6:61

loss in form of departure. When in doubt about the status of the frame i.e. body, they chose putrefaction, leaving the body until the stench of rotting flesh could be detected.<sup>389</sup>

As rational definition of death is a measure of the soul's departure, in the same way certain physical criteria have been observed for defining the death physically. The word 'soul,' ruh, is usually interchanged with the words 'nafs' and 'ruh'. The term 'ruh'...' can be translated as "spirit" or "material disembodied entity."

The Holy Quran usually use word "Adam" while referring to humans, However it is only on one occasion where most likely word "Ruh" has been used while referring to human soul, upon which most observers agreed.

“يَسْأَلُونَكَ عَنِ الرُّوحِ فَقُلِ الرُّوحُ مِنْ أَمْرِ رَبِّي وَمَا أُوتِيتُمْ مِنَ الْعِلْمِ إِلَّا قَلِيلًا”

“They ask you Prophet (S.A.W) about the ruh, and you say, The ruh is my lord's command (amr), you have received little knowledge.”<sup>390</sup>

If this is the case, determination that what soul actually is according to Quran is next to impossible as it has only been referred to one and no detail description is available. However, a careful examination of the word "ruh" in the Qur'an reveals that it refers to either the angel Gabriel, Jesus Christ, revelation, or the soul that Divinity exhaled into the form of Adam.<sup>391</sup> In fact, two other verses, in addition to the Qur'an 17:85, associate the term "amr" with the term "ruh." The "ruh" appears in each of these stanzas. It could be a reference to the angel Gabriel (Quran 42:52) or the revelation itself (Quran 40:15). Thus any association of word "ruh." With soul here is very unlikely. However a unique and direct statement on human spirit in Quran is - 17:85 in it Quran refers to the "human spirit," which you will never comprehend. Alternatively, the word "nafs" has many meanings in the Qur'an, and a

<sup>389</sup> Ibn (Abid in, Muh. Ammad, Radd al-Muh. Tar H. Ashiya Durr al-Mukhtar. 6 Vols, Beirut: Dar al-Fikr., 1992.

<sup>390</sup> Al Qur'an, Al-Isra, Surah 17, Ayah 85.

<sup>391</sup> "Mukhtar Al-Mahdi, 'Bidayat Al-Hayah Al-Insaniyyah,' in Al-Hayah Al-Insaniyyah: Bidayatuha Wa-Nihayatuha Fi Al-Maihum Al-Isi Ami, 345.

contextual translation of "soul" is insufficient. Humans are referred to in Quran with different word. Quran has referred to as, I (Quran 2: 9), human being (Quran 2: 72), life (Quran 2: 155), reflective pronoun (Quran 2: 187), inner disposition (Quran 2: 235), soul (Quran 3: 185), spirit (Quran 4: 1), evil self (Quran 5:30), soul exit (Quran 6:93), soul withdrawal at the time of death (Quran 39:42), The soul's self-suffering (Qur'an 75: 2) and the contented soul's return to God (Qur'an 89:27). The word "nafs" is used several times, implying that it refers not only to the "soul," but also to man as a whole, including physical existence, mental nature with malicious thoughts as self-poverty, and the spiritual soul that returns to God. This unified ability of the personality, which is viewed as a dynamic force, is what makes a person human, and its absence is regarded as the start of death.

Death is defined as the "irreversible loss of what is fundamental to its existence."<sup>392</sup>

To put it another way, when inheritance distribution and burial ground preparation be carried out the body is declared dead.

#### **4.8 The Consequences of Brain-Stem Death**

Muslims must consider whether or not organ retrieval from semi-dead people (those suffering from brain death or brain-stem death) is permissible. If it is not permissible, what are the reasons and justifications for its prohibition? To answer the above questions, it is necessary to first state that a brain-dead person is one whose brain stem, blood circulation, and heartbeat have all stopped functioning; furthermore, there is no hope of returning such a person to full health. This is the medical term for a brain-dead person. Furthermore, the death of the brain stem and the decomposition of the brain are signs of death for medical doctors. In contrast, real death for Muslim jurists is the complete departure of the spirit from the human

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<sup>392</sup> Ibid.

body; additionally, signs of death for Muslim jurists include the complete cessation of heartbeat and breathing.<sup>393</sup>

The reason for this is that there has been a great deal of confusion about which bodily organ is most important to human life. Some experts believe it is the heart, while others believe it is the brain or blood circulation (or even the liver). However, as modern medical technology has advanced, doctors have come to believe that the brain stem is the most important organ in the human body. As a result, contemporary scholars and medical doctors have argued that other patients may benefit from the organs of brain dead people who are about to die. In this regard, medical doctors maintain that a brain-dead person has no life at all; thus, if we wait until blood circulation and heartbeat fail in conjunction with brain death, the vital organs will become useless and no one will be able to benefit from them. As a result, these scholars and doctors have urged society to harvest organs while the brain-dead person is still on life support or artificial breathing.<sup>394</sup>

#### **4.9 Death Determination Using Neurological Criteria**

Although death is defined by nonexistence of bodies' circulatory requirements, immediate removal of organs from body based on such determination of death is not required as human body is designed as such that whenever death occurs all organs does not start decomposing immediately, this is due to the progressive destruction of the organ's cells as a result of oxygen deficiency. Scientific advances in intensive care procedures after the nineteenth century gave rise to the brain-based concept of death.<sup>395</sup> Following the publication

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<sup>393</sup> Bakr Ibn 'Abd Allah Abu Zayd, *Figh Al-Nawazil*. 1st Ed. Vol. 1/2, 220."

<sup>394</sup> Muhammad Ibn Muhammad Al-Mukhtar Jil-Shinqiti, *Afikam Al-Jirahah Al-Tibbiyyah*. 2nd Ed., 343; Mukhtar Al-Mahdi, 'Nihayat Al-Hayah Al-Insaniyyah,' in *Al-Hayah Al-Insaniyyah: Bidayatuha Wa-Nihayatuha Fi Al-Maihum Al-Lslami*, 2, 345; 'Isam Al-Din al Shirbini, "Al-Mawt Wa- Al-Hayah Bayna Al-ATibba Wa- Al-Fuqahaj/L-Hayah Al-Insaniyyah: Bidayatuha Wa- Nihayatuha F I al Maihum Al-Lslami, 2. 54-360; Hassan Hathut. 'Nihayat Al-Hayah Al-Insaniyyah,' in *Al-Hayah^Al-Insaniyyah: Bidayatuha Wa Nihayatuha Ii Al-Maihum Al-Lslami*, 2., 379-380; *Bakr Ibn 'Abd Allah Abu Zayd, Figh Al-Nawazil*. Is1 Ed. Vol. 1/2,220. 7,"

<sup>395</sup> Machado, Calixto, Julius Kerein, Yazmina Ferrer, Liana Portela, and Maria de La C Garcia. 2007. The Concept of Brain Death Did Not Evolve to Benefit Organ Transplants. *Journal of Medical Ethics* 33: 197–200.

of the 'Harvard Ad Hoc Committee study entitled 'A Description of Permanent Irreversible Coma' in 1968, this term became associated with organ transplantation.<sup>396</sup> With the refinement and development of the concept of brain-grounded death, transplantation success has improved significantly.<sup>397</sup> Because organ retrieval from brain-dead patients as a result of the deceased being artificially ventilated and perfused has helped in provision of organ availability. This consistency of, organ retrieval from brain-dead patients became the major and main source of organs. As a result of the deceased's theatrically expressed and infused existence, organ retrieval from brain-dead patients turns out to be the main source of hope for organ acceptor. Proponents of total brain death (in the United States) or brainstem death (in the United Kingdom) believe that the permanent loss of dynamic brain function is analogous to the death of an organ. Recognize that, in human experience, certain conditions of death are unparalleled. This condition did not exist prior to the development of life-saving machines. Terminal and fatal brain damage would have meant that all energetic functions of the body, including consciousness and heartbeat, would have come to an end. It is only because of such "modern death detection Technologies" that the use of neurological criteria to determine death become possibility. Although there are differences in how this diagnosis can be made, medical analysis of brain death as true death is a relatively common practice around the world.<sup>398</sup>

Tantawi,<sup>399</sup> a Muslim scholar, argued that the decision to make a death was beyond the purview of Muslim researchers and that doctors are absolute experts on the subject.<sup>400</sup>

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<sup>396</sup> Benjamin Hippen, "Robert M. Veatch and Lainie F. Ross: *Transplantation Ethics*, 2nd Ed.," *Monash Bioethics Review* 34, no. 1 (December 28, 2015): 92–98, <https://doi.org/10.1007/s40592-015-0049-4>.

<sup>397</sup> Machado, Calixto, Julius Kerein, Yazmina Ferrer, Liana Portela, and Maria de La C Garcia. 2007. *The Concept of Brain Death Did Not Evolve to Benefit Organ Transplant*, *Journal of Medical Ethics* 33: 197–200.

<sup>398</sup> Ebrahim Moosa, Ahsan Arozullah, and Aasim I. Padela, "Brain Death in Islamic Ethico-Legal Deliberation: Challenges for Applied Islamic Bioethics," *SSRN Electronic Journal*, 2011, <https://doi.org/10.2139/ssrn.2125190>

<sup>399</sup> Muhammad Sayyid Tantawy also referred to as Tantawi, was an influential Islamic scholar in Egypt. From 1986 to 1996, he was the Grand Mufti of Egypt.

In Kuwait, IOMS considered brain death to be an Islamic death in 1985. IIFA's declarations in 1986 and 1988 led to the opening of new centres in Saudi Arabia. As previously stated, the Ruh brain and the Death soul are not intangible forces that cannot be controlled. The soul is the fundamental force that drives man to strive for second place among scientists.<sup>401</sup> Mediæval Muslim scholars recognised the role of the soul as well.

Ibn al-Qayyim al-Jawziyya,<sup>402</sup> inquires about the creative stages of ruh. The existence of soul cannot be denied however he wonders if the soul is born in the brain or if it is a delicate substance that is born on the left side of the heart and mingles in the blood vessels around the body or inside the heart. Ibn al-Qayyim chooses the concept of a breathing, energetic, delicate, divinely illumined mass that infuses and circulates the spirit of organs while water flows in the form of a rose or oil in the oil or coal fire of the oil.<sup>403</sup>

He claims that the latter remains incorporated with the organs because the organs are capable of being affected by this delicate mass and that it benefits the organs with stimuli and intended movement. When, on the other hand, the organs are damaged as a result of the overwhelming of a distant entity and are no longer able to tolerate the things of the ruh. That is a hint of ruh. He has left and gone to the world of the soul. For supporters of the second position, the above definition of the soul's combined function with the body corresponds to the brain's combined association with the body. For advocates, irreversible loss of the brain's vibrant roles is a sign that the soul has left and the individual is dead. This soul-brain-body

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<sup>400</sup> "Sayyid Tantawi, *Mu'āmalāt Al-Bunūk Wa-Aḥkāmuhā Al-Shar'īya*. Cairo: Dār Nahḍat Miṣr. 1998. ISBN 9770157899,"

<sup>401</sup> Ibid.

<sup>402</sup> Ibn Qayyim al-Jawziyya (29 January 1292–15 September 1350 CE / 691 AH–751 AH), commonly known as "The son of the principal of the school of Jawziyyah or Ibn al-Qayyim Son of the principal"; ابن القيم for short, or reverentially as Imam Ibn al-Qayyim in Sunni tradition, was an important mediæval theologian, jurist and spiritual writer. Belonging to the Hanbali school of orthodox Sunni jurisprudence.

<sup>403</sup> Fakhr Al-Din Al-Razi, *Al-Tafsir Al-Kabir*. 3rd Ed. Vol 21/ 22., 38-39; Muhammad Ibn Abi Bakr Ibn Qayyim Al-Jawziyyah, *Kitab Al-Ruh*(Beirut: Dar Al-Fikr, 1991), 152-55.

relationship was not kept hidden. In the next place, the brain-death requirements raise more concerns for supporters than they can address.<sup>404</sup>

Following that, organ recovery while supporters of this stance encourage organ gifting and contributions as of patients with breathing and cardiovascular death, they have serious reservations about agreeing to designate recovered organs after neurological criteria have been used to assess the donors' death. It creates an unusual situation for these students, where the patients are gone from one perspective whereas body still have symbols of breathing from outside, i.e. warmth body, running pulse but no speech. Some argue that the prognosis of death has been misunderstood as a result of its diagnosis, and that the expiry of the organ has been merged with the expiry of an organ. Such somatic processes, such as breathing, are an indicator of the presence of the soul in the body, even if they are mechanically present.<sup>405</sup> At that point, ending life is equivalent to slaughtering a vanishing but still breathing individual. Many prominent scholars, including Egypt's former grand mufti and al-one-time Azhar's rector, Gad al-Haqq (Ali Gad al-Haqq (d. 1996) (1979), the Syrian scholar, share this viewpoint. Muhammad Saad Ramad (d. 2013) and Ali Gomaa Mohammed (2003), another former Egyptian grand mufti.<sup>406</sup>

Although the Islamic Fiqh Council (IFC) of Mecca ruled in 1985 that the recovery of cadaver organs was permissible, the difficult issue of procuring organs from brain-dead patients was not addressed.<sup>407</sup> Later, in October 1987, a separate session was held to address the legal position of removing a brain-dead patient's artificial ventilation system. The conference agreed that, while it is appropriate for medics to turn off the life-support system in cases where comprehensive termination of heartbeat and breathing has not occurred, the

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<sup>404</sup> Ibid.

<sup>405</sup> Abu 'Abd Allah Ibn Muhammad Al-Qurtubi Al-Ansari, *Al-Jami' Li-Ahkam Al-Qur'an*. Vol. 16, (Cairo: Dar Al-Katib Al-'Arabi, 1967), 54-55."

<sup>406</sup> Ibid.

<sup>407</sup> *Majallat Al-Majma, Al-Fiqh al-Islam* 1: 77-80, "Resolution of the Islamic Fiqh Council in Its 8th Session (1985 IFC. 2003."

person will not be considered Islamicly dead.<sup>408</sup> While not specifically related to the method of organ recovery, this decision must be recited in conjunction with the role of donation of the previous deceased organ. The quandary of brain-dead organ recovery is a deadlock caused by opposing worldviews and ontological considerations of what a man is. Although position supporters associate the soul and death with essential brain functions, third location supporters prefer a more traditional definition of death, the complete cessation of essential fluids (living and blood flow). This is known as the universal thought of death, which everyone accepts.

The only accurate predictor of the onset of death is a slowing of the pulse and cessation of the heartbeat. It could be argued that this is not a valid Islamic death predictor because there is no correlation between the soul's exit and the end of the heartbeat in Muslim scripture. Al-Bouti<sup>409</sup> adds that he is relying on the legal instrument's presumption of continuity. The suddenly fading individual's lifespan is certain, but his death is uncertain, depending on the criteria used to assess death. The ambiguity of determining death through neurological criteria does not negate the certainty of life. Even if the person is still alive, no declaration of death can be pronounced artificially as long as the heartbeat continues.<sup>410</sup>

Those two concepts are 'permanence' and 'irreversibility.' 'Permanence' refers to the permanent impairment of cardiovascular functions due to legal or ethical considerations. For example, even though it is medically necessary to do so, the decedent did not want to be resuscitated following a heart attack. 'Irreversibility' refers to what is known as medical or

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<sup>408</sup> Qararat Al-Majma' (Al-Fiqh al-Islam' i Bi Makkat al-Mukarram al-Dawrat Min al-Uwla Il' a al-S' Abi' (Ashara. Makkah: Rabit' .at al-(Alam al-Isl' Am' IFC 2010, p. 231). IFC. 2004."

<sup>409</sup> Mohammed Said Ramadan Al-Bouti (*Arabic*: مُحَمَّد سَعِيد رَمَضَانَ الْبُوطِي, *romanized*: *Muhammad Sa'īd Ramaḍān al-Būṭī*) was a notable Sunni Muslim scholar who was also known as "Shaykh of the Levant". He was killed on 21 March 2013, during the Syrian civil war, reportedly in a bomb explosion

<sup>410</sup> Qararat Al-Majma' (Al-Fiqh al-Islam' i Bi Makkat al-Mukarram al-Dawrat Min al-Uwla Il' a al-S' Abi' (Ashara. Makkah: Rabit' .at al-(Alam al-Isl' Am' IFC 2010, p. 231). IFC. 2004." Pg.208.

biotic irreversibility; the fact that the heart can restart with no medical intervention.<sup>411</sup> "While modern Muslim intellectuals have recognised cardiopulmonary arrest as a consistent symbol of the soul's withdrawal," they have wanted it to be unalterable. This requirement of irreversibility is to ensure that the soul has undoubtedly left and, although this proviso is a new overview to the concept of death, it is debatable that it was continuously inferred but only because we agreed that we must interact with the dying / deceased's body had to be explicitly mentioned. As a result, DDCD (Donation from Circulatory Death) is not permitted prior to the circulatory death donation."<sup>412</sup>

A few researchers proposed a third position, dubbed "alive but legally dead."<sup>413</sup> This was the view of the intellectual of Jordan, Muhammad Sulayman al-Ashqar<sup>414</sup>

(d. 2009) who reasoned that we can cure a brain-dead being breathing from one point of view and consequently few of the directions of the alive will apply to him, i.e. the circulation of his prosperity to his successors and his spouse sitting in for the (iddah period will lone take place afterward full cardiac capture has engaged. Nevertheless, we may consider him from another angle. Scholars address the situation of a slain individual' (madhbuh) campaign that still has some biological life semblance and yet declares him dead for legal reasons. These scholars, therefore, claim that if the father of the slain person were to die after him, the slain person would not inherit anything from him, since he was technically dead and the deceased did not inherit anything from him.<sup>415</sup> Unfortunately, al-Ashqar has not further established his theories, so we don't recognize what parameters are being cast-off to say that the individual is departed and alive following this rule.

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<sup>411</sup> Benjamin Hippen, Robert M. Veatch and Lainie F. Ross: "*Transplantation Ethics*", 2nd Ed., Monash Bioethics Review 34, No. 1 (December 28, 2015): 92–98, <https://doi.org/10.1007/S40592-015-0049-4>

<sup>412</sup> Mohammed Zubair and Butt Jurisconsult, "*Organ Donation and Transplantation in Islam an Opinion*," <https://nhsbtdbe.blob.core.windows.net/umbraco-assets-corp/16300/organ-donation-fatwa.pdf>.

<sup>413</sup> Muhammad Sulayman, *Nihāyat al-Ayat al-Hayat*. Majallat al-Majma Al-Ashqar, 3rd Ed. (al-Fiqh al-Islamī al-Duwalī, 1987), 661–671.

<sup>414</sup> Sh. Mohammad Sulayman al-Ashqar, 1930-2009, the author of "Zubdat at-Tafsir" the abridged version of Tafsir ash-Shawkani and the author of the Usool book "al-Waadih fee Usool al-Fiqh"

<sup>415</sup> Ibid, Pg, 597-668.

Dr. Rafaqat Rashid, a UK Muslim researcher and medicinal surgeon, is progressing the death dispute to a somewhat prior stage. Rashid believes that death is the continuous cost of higher brain processing size, including the termination of wish, sentience, and volunteer deed. This is as soon as the conscious soul has vanished the ability to switch the vital humanoid and conscious body apparatuses forever. Rashid sees the soul functions mentioned above by Ibn al-Qayyim al-Jawziyya and additional intellectuals like al-Ghazali as the regulation of the soul over most conscious activities, which also resembles the higher brain functions of the cerebral cortex.<sup>416</sup>

Al-Ghazali claims that the soul is the main integrator of activities of the whole body and its expulsion leads to the breakdown of this integrated functioning of the body. This is precisely the brain's work or, more simply, the cerebral cortex<sup>417</sup> of the body. There are, however, certain parameters that will assess the irreversible loss of greater brain functionality.<sup>418</sup> While the cerebral cortex is the closest instrument of the rational soul and its execution, a simple distinction between a sentient individual and a sentient non-person is difficult to draw. Brain-stem death criteria should be the nearest and most precise criterion to use in the absence of a universal precise anatomical criterion for a higher brain formulation of death.<sup>419</sup>

This interpretation of the affiliation amongst the sophisticated working of the brain, the soul, and the physique leads it would be legally (Islamically) permitted to recover a donors' organs. It's not the sphere of science, metaphysics, or spirituality that the spectacle of pronouncing someone deceased falls firmly within the realms of Muslim law.<sup>420</sup> Over a

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<sup>416</sup> Al-Ghazafi, Muhammad Ibn Muhammad. *Ihya' 'Ulum Al-Din*. 4 Vols. Cairo: Maktabat AlTiyariyyah Al-Kubra,"

<sup>417</sup> The brain is one of the largest and most complex organs in our body; it is composed of billions of neurons that communicate together by forming numerous connections.

<sup>418</sup> Al-Ghazafi, Muhammad Ibn Muhammad. *Ihya' 'Ulum Al-Din*. 4 Vols. Cairo: Maktabat AlTiyariyyah Al-Kubra,"

<sup>419</sup> Frank Griffel, *Al-Ghazali's Philosophical Theology*, P 75. ISBN 0199724725,

<sup>420</sup> Frank Griffel, *Al-Ghazali's Philosophical Theology*, P 75. ISBN 0199724725

thorough understanding of some pattern cases institute in the manuals of classical Islamic law, he draws this conclusion. Through illustration, the manuals of the conventional Islamic law state that penalty of qisas (payback for murder) can be enforced on an individual who slits the throat of someone else because the target has permanently vanished altogether thought, volition, sight, speech, and voluntary movements as long as that attack leads to the irreversible loss of all voluntary and involuntary movements.<sup>421</sup> Organ retrieval is appropriate at this stage, no jurisdiction in the world allows organ retrieval based on irreversible loss of higher brain functions.<sup>422</sup>

#### **4.10 Brain or Heart Death: Complete Death**

Even though brain function indicates whether a person is alive or not that's why human brain is inextricably linked with life and death. According to Ahmad Shawqi Ibrahim,<sup>423</sup> a renowned Muslim writer, brain death is a total death: human life ends when the spirit departs or is separated from the body and the soul returns to its Creator. We already know that the spirit/soul, consciousness, understanding, intellect, and memory are all related to the brain, and that the brain is the only source and centre for all of them. Then there is brain death or brain stem death, which is the end of human life. Human death is not the cessation of breathing or the cessation of heartbeat, nor is it the cessation of both, because if both cease to function, it does not necessarily imply that the brain is dead. As a result, it does not denote the end of a human life.<sup>424</sup> In my opinion, we must reconsider the notion that human life ends when a person's brain dies, even if the person's heart continues to beat artificially, if brain specialists and medical doctors confirm that the brain is dead, there is no reason to postpone accepting the person's death, even if his or her heart and lungs are still

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<sup>421</sup> Ibid.

<sup>422</sup> N. Berka et al., "Organ Transplantation: Islamic Philosophy and Perspective," *Human Immunology* (January 1994): 172, [https://doi.org/10.1016/0198-8859\(94\)92002-8](https://doi.org/10.1016/0198-8859(94)92002-8).

<sup>423</sup> Professor at Cairo University and researcher.

<sup>424</sup> Ahmad Shawqi Ibrahim, "Nihayat Al-Hayah Al-Bashariyyah," in *Al-Hayah Al-Insaniyyah: Bidayatuha Wa-Nihayatuha Fi al Maqhum Al-Islami*, 2.

working in that case. However if his or her lungs continue to breathe on their own then declaration of death may be discouraged. As many medical doctors have demonstrated, brain death simply means that a person's organs exist in an animalistic or vegetative state rather than within the context of a complete human life.<sup>425</sup> There are specific criteria to consider when determining whether or not an organ is dead. Certain knowledgeable scholars, for example, say that "heart death" means that the heart must completely stop functioning, and that the heart must not be able to reactivate and return to use at all; similarly, "brain death" means that the brain must completely stop all of its functions, and that it must not be able to reactivate and return to use at all.<sup>426</sup> There are specific medical procedures for determining whether a brain dead person can engage in any further brain activity. "It is important to connect the brain graphic equipment or brain function measurement equipment to any patient with a severely damaged brain," says Al-Mahdi.<sup>427</sup> When diagnostic equipment to determine brain stem function reveals that the brain is dead and has collapsed, a team of two or more specialists and medical doctors will be able to clinically diagnose the patient.<sup>428</sup>

Current scholarly perspectives on brain death reflect the advancement of human knowledge through science and technology, particularly medical science. According to Al-Shirbini,<sup>429</sup> one of the most significant advances in medical science is the ability to continue human breathing when a person is unable to breathe independently on their own. Even if a person suffers head and brain injuries in an accident, he can breathe artificially with the help of a life-support machine. In this case, the heart continues to beat for a few days while the brain has already died and begun to decompose. As a result, the concept of brain-stem death

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<sup>425</sup> Ibid, 377

<sup>426</sup> "Ahmad Al-Qadi, *"Al-Qalb Wa-'Alagatuhibi Al-Hayah," in Al-Hayah Al-Lnsaniyyah: Bidayatuha Wa-Nihayatuha Fi al-Mafhum Al-Lslami, 2.387,"*

<sup>427</sup> Mukhtar Al-Mahdi, '*Nihayat Al-Hayah Al-Insaniyyah,*' in *Al-Hayah Al-Lnsaniyyah :Bidayatuha Wa-Nihayatuha Fi Al-Mafhum Al-Lslami, 2., 345,"*

<sup>428</sup> Mukhtar Al-Mahdi, '*Nihayat Al-Hayah Al-Insaniyyah,*' in *Al-Hayah Al-Lnsaniyyah :Bidayatuha Wa-Nihayatuha Fi Al-Mafhum Al-Lslami, 2., 345.*

<sup>429</sup> Al-Khaṭīb ash-Shirbīnī (الخطيب الشربيني), died 1570 C.E.) was a Shafi'i scholar from Egypt, who wrote many works on exegesis, fiqh, the Arabic language.

determination functions as a sign of brain death—which is also a complete death of the person.<sup>430</sup>

Hathout<sup>431</sup> makes an interesting point about brain death when he says that medical science indicates that death is marked by the death of the brain rather than the cessation of the heartbeat or the cessation of lung function. As a result, he maintains that when machines that measure brain stem function clearly show that electric graphs of the brain have failed and shut down, "...this means that the brain stem is entirely dead and the rest of the body undoubtedly enters the field of death." Whatever is used to keep artificial breathing and blood circulation continue can last for a while, but it is impossible to bring a patient back to life.<sup>432</sup> With regard to the preceding remarks, there are several important facts to consider. First, Hathut emphasises that "brain death" is medically equivalent to "death." Second, he believes that death occurs the instant the brain does not respond to electric shock. Furthermore, he emphasises the importance of life-support equipment, such as artificial breathing, in protecting the body and its organs from decomposition. In this regard, life-support equipment helps to keep organs in good condition until they can be procured and transplanted into another patient. Furthermore, Hathut's position clearly demonstrates that the use of life support equipment is not intended to postpone death or to maintain life indefinitely; nor is it intended to pointlessly increase the suffering of the patient's family. Instead, he claims that the general use of life support equipment is not a waste of scarce medical resources because they are expensive in cost but are of great use in preserving the organs; Thus equipment in its

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<sup>430</sup> Isam Al-Din Al-Shirbini, "*Al-Mawt Wa- Al-Hayah Bayna Al-ATibba Wa- Al-Fuqaha*," in *Al-Hayah Al-Insaniyyah: Bidayatuha Wa-Nihayatuha F I Al-Mafhum Al-Lslami*, 2., 354.

<sup>431</sup> Hassan Hathout was a Muslim doctor and professor of medicine who lived in Britain, the south-west Asia, and the United States. Frequently referred to as having an encyclopedic personality, Hassan Hathout was also a theologian, humanist, speaker, writer and poet.

<sup>432</sup> Hassan Hathut, '*Nihayat Al-Hayah Al-Insaniyyah*,' in *Al-Hayah Al-Insaniyyah: Bidayatuha Wa- Nihayatuha Fi Al-Maihumi al Islam*, 2, 37,"

self is of great use rather, the problem is the actual misuse of these life support machines, which prevents other patients from benefiting from available medical technology.<sup>433</sup>

#### **4.11 Increasing Life Expectancy (Coma)**

If a comatose person does not regain consciousness, whether it is a total or partial loss of intellect, dead brain cells cannot be renewed. In this situation, such a person could live his entire life. This person has "a body-life," in the sense that he is mentally disabled and requires high-quality nursing, medical care, and treatment for new diseases. Living in a bed for an extended period of time may exacerbate the situation. Such a person will have to take liquid processed food into their stomach via a tube. Furthermore, because his/her brain stem is still alive, such a person will breathe spontaneously, but he/she must be in a hospital bed for the remainder of his/her life or until he/she comes out of the coma.<sup>434</sup>

#### **4.12 The Treatment of Pain and the Withdrawal of Life-Sustaining Treatment**

Withholding or withdrawing "life support treatment" with the intent of allowing the person to die when it is certain that the disease is causing untreatable suffering are permissible acts as long as structures for consultation between all parties concerned about the patient's well-being are in place. This does not alter the fact that there are no justifiable grounds in Islam for killing a terminally ill person, whether through voluntary active euthanasia or physician-assisted suicide.<sup>435</sup> The treatment of pain and the withdrawal of life-sustaining treatment are two important and often controversial issues in medical ethics.

In the case of pain treatment, the primary ethical concern is ensuring that patients receive adequate relief from pain while also avoiding the risks of addiction, overdose, and other adverse effects associated with certain pain medications. This can be a challenging

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<sup>433</sup> Ibid, 380,

<sup>434</sup> Mukhtar Al-Mahdi, '*Nihayat Al-Hayah Al-Lnsaniyyah*,' in *Al-Hayah Al-Lnsaniyyah: Bidayatuha Wa-Nihayatuha Fi Al-Mafhum Al-Lslami*, 2. 343.,"

<sup>435</sup> Abdulaziz Sachedina, '*Right to Die? Muslim Views about End of Life Decisions*'. (June 7, 2005), 5. [Http://www.People.Vir&Inia.edu/~Aas/Article/Atticle3.Htm](http://www.People.Vir&Inia.edu/~Aas/Article/Atticle3.Htm),"

balancing act, particularly for patients with chronic pain who may require long-term pain management.<sup>436</sup>

One area of controversy in pain treatment is the use of opioid medications, which have been associated with a growing epidemic of addiction and overdose in many parts of the world. While opioids can be effective at managing pain, there are concerns about over-reliance on these medications and the potential for harm to patients.<sup>437</sup>

Another issue in pain treatment is the role of patient autonomy in decision-making. Patients may have different preferences and goals for pain management, and it is important to respect their wishes while also providing appropriate medical guidance and support.

In the case of the withdrawal of life-sustaining treatment, the primary ethical concern is ensuring that patients receive appropriate end-of-life care while also respecting their autonomy and dignity. This can be a challenging balancing act, particularly when patients are no longer able to make decisions for themselves.<sup>438</sup>

One area of controversy in the withdrawal of life-sustaining treatment is the definition of "life-sustaining." Some treatments, such as artificial nutrition and hydration, may be considered life-sustaining but are not always effective or appropriate for all patients.

Another issue in the withdrawal of life-sustaining treatment is the role of family members and other caregivers in decision-making. While it is important to respect the autonomy of the patient, family members may have important insights into the patient's wishes and values that can inform decision-making.

Overall, the treatment of pain and the withdrawal of life-sustaining treatment are complex and multifaceted issues that require careful consideration of ethical principles and medical best practices. By respecting patient autonomy while also providing appropriate

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<sup>436</sup> Ibid.

<sup>437</sup> Golmakani, Mohammad Mehdi, Mohammad Hussein Niknam, and Kamyar M. Hedayat. 'Transplantation Ethics from the Islamic Point of View.' *Medical Science Monitor* 11, No. 4 (2005): 105-09

<sup>438</sup> Ibid.

medical guidance and support, healthcare providers can help ensure that patients receive the care they need while also upholding important ethical standards.<sup>439</sup>

#### 4.13 Ownership of Human Body in Islam

Proprietorship is a complex set of requirements for rights, obligations, authorities, and exemptions. The usual events include the right to own the thing, the right to treatment, the right to income, and so on, as well as the right to dispose of the object and the freedom to devour, waste, or abolish it. Expropriation protection; inheritance law; lack of expression; prohibition on harmful use; enforcement responsibility; and remaining character This list is a useful resource for identifying various modes of ownership.<sup>440</sup>

The human body owns three possible positions, the humanoid physique and its fragments are not owned, and ownership is limited to ownership of physical organs and full ownership of the body and its parts rather than full ownership of the body and its parts. Along with any of the aforementioned events, not everyone owns their body. You cannot, for example, give your own body to someone else, nor can you waste your own body. Furthermore, almost all jurisdictions prohibit the sale of human organs.<sup>441</sup> As a result, it appears reasonable to conclude that human property is restricted to its own body. The secular school of thought, regardless of who owns it, is the most important thing for a person to make decisions about his or her body after death. As a result, in many cases, applying the preliminary directive solves ethical problems.<sup>442</sup>

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<sup>439</sup> Ibid.

<sup>440</sup> Gardiner D. "How the UK Overcame the Ethical, Legal and Professional Challenges in Donation after Circulatory Death" QUT Law Rev. 2016; 16:125–134.

<sup>441</sup> Ibid.

<sup>442</sup> Lori B. Andrews, "My Body, My Property," The Hastings Centre Report 16, no. 5 (October 1986): 28, <https://doi.org/10.2307/3562693>.

According to Islamic belief, the body, like the soul, is a "gift" from Deity; man does not have complete ownership of his body. Man's ownership of his bodies, on the other hand, can be described as a form of "stewardship."<sup>443</sup>

An individual does not have any kind of authority or ownership over his or her soon-to-be-gone body. As a result, in Islamic law, an advance command is not considered an absolute right.<sup>444</sup>

Islam emphasises reverence for the body as a gift from Allah; a Muslim does not fully "own" his body, but only cares for it as a precious gift while he is alive. Muslims are obligated to take as much care of their own health as possible, as well as the health of other Muslims. As Muslims, we must also value nature, the climate, and the physical health of all living beings, including those of other faiths. On the Day of Verdict, Prophet Muhammad (PBUH) warned Muslims that if they misused the gift of healthy bodies in their lives, they would be questioned before Allah. Unlike some other religions, it is forbidden for a Muslim to end his own life or harm or injure his own body; Quran states,

"وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ  
الْمُحْسِنِينَ"

*And spend in the way of Allah, and do not throw [yourselves] into  
destruction with your [own] hands [by refraining]. And do well;  
Allah, after all, loves those who do good.*<sup>445</sup>

According to Islam, every living being has equal access to life-sustaining resources, and humans deserve the greatest amount of respect as Allah's deputies on earth. Muslims are

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<sup>443</sup> Abdulaziz Abdulhussein Sachedina, 'Islamic Biomedical Ethics: Principles and Application,' (New York: Oxford Univ. Press, 2012).

<sup>444</sup> Padela, Aasim I. 'Islamic Bioethics: Between Sacred Law, Lived Experiences, and State Authority.' Theoretical Medicine and Bioethics [Theor Med Bioeth] 34, No. 2 (April 2013): 65-80.

<sup>445</sup> Al Quran, Al Baqra, 2; 195.

encouraged to research and study the roles of our human bodies in order to appreciate Allah's magnificence and to save precious lives.<sup>446</sup>

#### 4.14 Western Perspectives on Human Body Ownership

In west people must give their authority or consent for organ donation by signing a donor card, according to the evidence presented. Human body parts, including organs and tissues, are subject to property rights<sup>447</sup> and thus these human organs and tissues are protected by property rights, such as the right to sell and buy. This is due to the fact that individuals have complete authority and property rights over their entire body. However, some groups argue that individuals' rights to control their bodies will not prevent hospitals, medical doctors, or nurses from profiting from human organs donated by individuals and family members.<sup>448</sup> Margaret Radin,<sup>449</sup> a legal expert and property rights scholar, discusses the ideology of treating human body parts like any other commercial good, despite the fact that human parts and body is different from other commoditized goods:

*“We are committed to an ideal of individual uniqueness in our understanding of personhood that does not cohere with the idea that each person's attributes are fungible, that they can be traded off against those of other people. Universal market rhetoric transforms our world of concrete people, whose uniqueness and individuality are expressed through specific personal attributes, into a world of disembodied,*

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<sup>446</sup> Nevad Kahteran, “Oliver Leaman (Ed.). The Biographical Encyclopedia of Islamic Philosophy,” *Synthesis Philosophica* 31, no. 2 (February 10, 2017): 464–65, <https://doi.org/10.21464/sp31219>.

<sup>447</sup> Donald Joralemon, ‘Organ Wars: The Battle for Body Parts’ *Medical Anthropology Quarterly*, New Series, Vol. 9, No.3 (1995):336,”

<sup>448</sup> Ibid.

<sup>449</sup> Legal scholar specializing in property rights and contractual obligation. Professor of Law, at the University of Michigan.

*fungible, attribute-less entities with a plethora of alienable, severable objects.*"<sup>450</sup>

Radin has also discussed increasing the commercialization and commodification of human body parts on the market. Human body marketing and commodification ideology is currently shifting from pure medicinal purposes to political movements with explicit free market rhetoric, which lawyers and business professionals/interest groups have long lobbied for.<sup>451</sup>

#### **4.15 The Rationalization for Human Dignity**

The issue of human dignity stems from the argument that the human body is a gift from God; who is the true owner of the body.<sup>452</sup> The Qur'an says in several verses that God elevated mankind.<sup>453</sup> There are two levels of breach of this dignity:

- (a) Degradation (Ihana).
- (b) Mutilation (Muthla).

However, while salvaging organs to prolong the funeral is not mutilation in and of itself, it is considered an infringement of dignity because it prolongs what should be done naturally (i.e., burial).<sup>454</sup>

Besides, the perception of the dying or deceased individual as a possible organ repository relegates human dignity to that of a means to an end. When physical interference in the body is involved, the degradation (ihana) intensifies. Any type of cut hooked on the humanoid physique, lifeless or active, is considered mutilation deprived of any corporeal

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<sup>450</sup> Ibid, 345.

<sup>451</sup> Ibid.

<sup>452</sup> Krawietz Birgit, "Brain Death and Islamic Traditions: Shifting Border of Life In Islamic Ethics of Life: Abortion, War and Euthanasia". (Columbia, University of South Carolina Press, n.d.), 194–213.

<sup>453</sup> Al Quran, Al Isra 17; 70.

<sup>454</sup> Mark J. Cherry, "Ownership of the Human Body: Philosophical Considerations on the Use of the Human Body and Its Parts in Healthcare Philosophy and Medicine. Vol. 59.," New England Journal of Medicine 341, no. 2 (July 8, 1999): 132–132, <https://doi.org/10.1056/nejm199907083410218>.

assistance to the donors (islah. al-badan). A conversation between God and Satan in the Qur'an about ways in which the last can lead persons awry is provided as evidence.<sup>455</sup>

Academics have responded that, while the Qur'an states that humans have self-esteem and are respected, it does not provide specific instructions on how to achieve this self-esteem. It is then up to society to decide how to define integrity.<sup>456</sup>

Mutilation (muthla) has a special meaning in Arabic, particularly in the context of conflict. Mutilation was shunned in Arabia as a weapon to harm living by humiliating their loved ones. Malicious intent is required for mutilation. Al-Bassam contends that the concept of mutilation cannot be reduced to a precise operation performed in a hospital sterile setting by the fingers of a trained medical practitioner with the sole intent of saving the lives of others. He goes on to argue that organ transplantation is an example of an update of Satan's prediction and a misrepresentation of the canto's meaning. According to a careful interpretation of the Qur'an, mutilation in this situation is associated with a few mysterious practises involving the occlusion of animal organs (particularly a 5-year-old male-born camel) to prevent evil from others in the herd.<sup>457</sup>

#### **4.16 Exploring the Ethics of Organ Sale: Perspectives from Muslim and Western Thinkers**

Experts and the general public have been drawn to the issue of human organ sales and donation because of its novelty and importance. It's a topic that touches on the concept of human life, values, and dignity, as well as the economic, social, and legal realms. For philosophical and religious reasons, the subject of human organ sales and donation is also compelling and perplexing. It connects some of the most powerful religious and secular ideas

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<sup>455</sup> "Al-Tabari, Muhammad Ibn Jarir. *Jami'al-Bayan Tafsir Al-Qur'an*". Lsl Ed. 30 Vols. Bolaq, Cairo: Al-Matba'a Al- Amlriyyah, 1986.

<sup>456</sup> Rah. Man<sup>1</sup>, Khalid S<sup>1</sup>, "*Ayfullah, Jad'id Fiqh<sup>1</sup> Masa<sup>1</sup> iL*". Karachi: Zamzam Publishers, Vol. 5. 2010.

<sup>457</sup> Al-Tabari, Muhammad Ibn Jarir. *Jami'al-Bayan Tafsir Al-Qur'an*". Lsl Ed. 30 Vols. Bolaq, Cairo: Al-Matba'a Al- Amlriyyah, 1986."

and principles that govern and enrich modern life today, such as our devotion to scientific and medical progress for the relief of man's suffering; private property and free enterprise; and the primacy of personal autonomy and choice, as Leon Kass,<sup>458</sup> and others have argued.<sup>459</sup> In addition, there are certain other notions that arise with human organ sales and donation, chief among them being notions of decency, propriety and the sanctity of human body's integrity along with respect for a person's mortal remains.<sup>460</sup>

"Organs for Sale?" Question was asked by Kass delves in the debates over organ sales, that "Why is it so offensive to engage in the commercialization of human organs but not in their donation?"<sup>461</sup>

This is at the heart of the debate over organ transplantation between past commentators and current Muslim and Western thinkers and experts: what is the qualitative difference between giving an organ and selling it, and between receiving it as a gift and buying it?<sup>462</sup> One of the most striking features often overlooked in the fractious debate over the permissibility and ethics of organ sales and donation—and, by extension, organ transplantation itself—is that society has already overcome its societal aversion to the "exploitative manipulation" of one human body to serve the life and health of another by allowing organ donation. According to Kass, we justify our current arrangements for obtaining organs for transplantation not only on the basis of utility and individual freedom, but also on the basis of generosity, because the giver's generous deed is made inseparable from the organ given.<sup>463</sup> But what about those in desperate need of organs who can't afford to wait for others' generosity and would rather help themselves by donating money for life-

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<sup>458</sup> Leon Richard Kass is an American physician, scientist, educator, and public intellectual. Kass is best known as a proponent of liberal education.

<sup>459</sup> Leon Kass, 'Organs for Sale? Propriety, Property, and the Price of Progress' *Intervention and Reflection* (2000): 65-86.

<sup>460</sup> Ibid.

<sup>461</sup> Ibid.

<sup>462</sup> Ibid.

<sup>463</sup> Ibid.

saving organs?<sup>464</sup> To put it another way, what's so bad about allowing "payment" between willing donors and willing buyers/recipients to sell their organs? This is especially true for people who are facing an impending or protracted death.<sup>465</sup> Despite the prohibitions, many transplant surgeons, hospitals, and even non-profit transplant registries and procurement agencies profit handsomely from the organ-trading business world.<sup>466</sup> Should human organ sales be reconsidered and permitted in light of these facts? Kass, for one, strongly opposes financial incentives, believing that they will inevitably: 1) commoditize these exchanges; and 2) turn generosity into trade, gratitude into compensation, and treat the "most delicate of human affairs" as if everything is reducible to its price.<sup>467</sup>

There are important considerations in the sale and donation of human organs, according to Islamic religious experts and scholars. These debates centre on the concept of human body ownership, as well as the role of "Zarura," or dire necessity, and the implications of modern medical and scientific advances like blood transfusion and organ transplantation. Scholars like Muhammad Yahya Ahmad Abu AlFutuh, a legal consultant in Kuwait's Ministry of Health,<sup>468</sup> Mukhtar Al-Mahdi, the chief of the Department of Nerve and Brain Surgery at Kuwait City's Ibn Sina Hospital<sup>469</sup> and Egypt's Grand Mufti Muhammad Sayid Tantawi<sup>470</sup> have ruled that purchasing and selling human organs is "unlawful" in Islam unless it is absolutely necessary. Scholars who include Sheikh Al-Sha'rawi, a well-known Qur'anic commentator has issued rulings against selling and donating human organs on the ground that a human's body is owned by Allah, and thus he/she is not permitted to dispose of it in light of

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<sup>464</sup> Ibid.

<sup>465</sup> Ibid.

<sup>466</sup> Ibid.

<sup>467</sup> Ibid, 65-86.

<sup>468</sup> Muhammad Yahya Ahmad Abu Al-Futuh, "Bay' Jil-A 'Da' Al-Bashariyyah F I Mizaii Al-Mashru 'Iyyah in Al-Ru'yah Al-Islamiyyah Li-Ba'dal-Mumarasat Al-Tibbiyyah, Ai-Islam Wa-Al-Mushkilat Al-Tibbiyyah Al-Mu'asirah" (Kuwait:AI-Munazzamah Al-Islamiyyah Lil-'Ulum Al-Tibbiyyah,1995), 371.

<sup>469</sup> Ibid.

<sup>470</sup> Muhammad Sayyid Al-Tantawi, 'Hukm Bay' Al-Insan Li'Udwin Min a "Da'ihl Aw Al-Tabarru" Bihi,' in Al-Ru 'Yah Al-Islamiyyah Li-Ba'd Al-Mumarasat Al-Tibbiyyah, 309-314."

the juristic rule "He who does not have a thing cannot give."<sup>471</sup> Others, such as the previous Grand Mufti of Egypt, Jad Al-Haqq Ali Jad Al-Haqq, as quoted by al-Tantawi,<sup>472</sup> have allowed or deemed organ donation permissible under certain conditions, the most important of which is the involvement of a trustworthy doctor and obtaining the consent of a living patient to operate on their body in order to transfer an organ to another person. They have cited the Qur'anic verse "And slay not yourselves, and cast not yourselves into perdition with your hands" as evidence.<sup>473</sup>

According to Al-Tantawi, some of these scholars have even been tempted to accept the permissibility of paying material recompensation in cases where the non-transfer of an organ to a patient would result in their ruin or serious harm, and there is no blood relative donor available, because such a case would be one of "dire necessity."<sup>474</sup> By analogy to the legal sale of a woman's milk and blood, these scholars have justified the disposal of human organs through sale or donation.<sup>475</sup> Other scholars disagree, arguing that there is a significant difference between selling a woman's milk or blood and selling human organs.

The removal of the former—milk women's and human blood—does not reduce or impede bodily functions, according to Abu al-Futuh, because they are renewable by nature and the "sold" quantity can be easily replenished—though he does note that if the quantity of blood is excessive and causes harm to the body, the sale would be prohibited because harm

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<sup>471</sup> Ibid.

<sup>472</sup> Ibid 309-314.

<sup>473</sup> Al quran, Ch. 2; 195.

<sup>474</sup> Muhammad Sayyid Al-Tantawi, 'Hukm Bay' Al-Insan Li- "Udwin Min A'da'ihī Aw Al-Tabarru" Bihi,' in *Al-Ru'yah Allslamiyyah Li-Ba'd Al-Mumarasat Al-Tibbiyyah, Al-Lslam Wa-Al-Mushkilat Al-Tibbiyyah Al-Mu'asirah*.3 (Kuwait: Al-Munazzamah Al-Lslamiyyah Lil-'Uium Al-Tibbiyyah, 1995), 312."

<sup>475</sup> Muhammad Na 'Im Yasin, 'Bay' Al-A "Da" Al-Adamiyyah,' in *Al-Ru'yah Al-Lslamiyyah Li-Ba'd Al-Mumarasat Al-Tibbiyyah*, 356."

has been established.<sup>476</sup> Furthermore, there is a group of academics who oppose human organ sales but distinguish between "purchaser" and "seller."<sup>477</sup>

Muhammad Fawzi Fayd Allah—a professor at the Faculty of Islamic Shari'ah and Islamic Studies at Kuwait University, Kuwait, says these scholars hold that a free man (be he a Muslim or Dhimmi i.e, a free non-Muslim residing in Muslim lands) cannot be sold, which includes selling him or some part of his body.<sup>478</sup> However, they maintain that if a patient has no other option but to obtain an organ from another person, and he is unable to find a donor or an artificial substitute, then "...purchase of that organ is permissible within the aforementioned conditions for cutting from living people, due to a dire necessity, and in this, the patient does not commit a wrongdoing, but the seller commits the sin."<sup>479</sup>

Sheikh Muhammad al-Mukhtar al-Salaml, the Grand Mufti of Tunis, says that rulings on organ transplantation are conditional on the objective.<sup>480</sup> Transplantation, according to al-Salaml, can be done for cosmetic reasons, such as adjusting a nose or chin size or enhancing one's appearance,<sup>481</sup> These reasons, however, do not apply to brain or nervous system transplants, according to al-Salaml, because of their unique role in granting a person's human qualities.<sup>482</sup> He is adamant that transplantation should only be permitted for genuine psychological or physiological reasons, such as restoring body health and normalcy and psychological balance, and not for cosmetic reasons.<sup>483</sup> According to al-Salaml, such

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<sup>476</sup> Ijam udin<sup>^</sup>Al-Shirbini, 'Al-Mawt Wa- Al-Hayah Bayna Al-Atibba Wa- Al-Fuqaha,' in *Al-Hayah Al-!Nsaniyyah: Bidayatuha WaNihayatuha F I ALMaihum Al-Islami, Al-Lslam Wa-Al-Mushkilat Al-Tibbiyyah Al-Mu'asirah 2*. (Kuwait:AI-Munazzamah Allslamiyyah Lil-'Ulum Al-Tibbiyyah, (1985).

<sup>477</sup> Abu al-Futuh, "Bay'al-A'da' al-Bashariyyah fi Mizan al-Mashru "iyyah," 371.

<sup>478</sup> Muhammad Fawzi Fayd Allah, 'Al-Tasarruf Fi A'da' Al-Insan,' in *Al-Ru'yah Al-Lslamiyyah Li-Ba'd Al-Mumarasat AlTibbiyyah*, 330.

<sup>479</sup> Ibid 338.

<sup>480</sup> Muhammad Al-Mukhtar Al-Salami, "Zara 'at Khalaya Al-Jihaz Al-'Asabl Wa-Khassatan Al-Mukh," in *Al-Ru'yahislamiyyah Lizara'at Ba 'Dal-A 'Da'al-Ba*.

<sup>481</sup> Ibid, 117.

<sup>482</sup> Ibid, 118.

<sup>483</sup> Ibid.

transplantation is permissible under certain conditions and when there is a good chance of recovery.<sup>484</sup>

Organ transplantation, in his opinion, is a treatment that allows doctors to overcome illness, pain, and mutilation.<sup>485</sup> He also claims that the transplant organ should only be used if it is still alive, and that an organ can live after its owner's brain-stem has died.<sup>486</sup> He also adds that it could be a life-saving organ or not.<sup>487</sup> However, because the brain is a unique and personality-giving organ, Al-Salaml insists that it should never be removed entirely or partially from anyone capable of sustaining life.<sup>488</sup>

Barbara A. Koenig and Linda F. Hogle point out that organ transplantation—a technology that has become "standard therapy" in the last 30 years—provides an opportunity to look at changes in body and self-concepts. They also say it's a good place to look into a variety of contemporary issues like property rights, commodification, the changing nature of kinship in modern culture, and artificial life extension (or death) or life-support technology.<sup>489</sup> Koenig and Hogle also contend that organ transplantation is part of life-sustaining treatment, saying that "Transplantation must be located within the spectrum of end-of-life technologies' deployed to stave off death".<sup>490</sup> In their analysis, Koenig and Hogle also review and extensively cite the works of Donald Joralemon (a professor of Anthropology at Smith College) and Lesley A. Sharp (another professor of Anthropology at Barnard College), both of whom touch on all of the above mentioned issues related to organ

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<sup>484</sup> Ibid, 119.

<sup>485</sup> Ibid.

<sup>486</sup> Ibid.

<sup>487</sup> Ibid 120

<sup>488</sup> Ibid.

<sup>489</sup> Barbara A. Koenig and Linda F. Hogle, 'Organ Transplantation (Rc) Examined?' *Medical Anthropology Quarterly, New Series*, Vol. 9, No.3 (1995): 393."

<sup>490</sup> Ibid 393

transplantation (i.e. property rights, commodification, life support, the conception of body and self and so on).<sup>491</sup>

#### 4.17 Organ Exchange in the Secondary Literature

Furthermore, when it comes to general verses from Muslim scriptures relating to Divinity's property and humanoid self-esteem, academics primarily rely on Islamic legal works, which include both abstract legal maxima (al-qawa'id al-fiqhiyya) and legal precedents. (furu al-fiqh), In the absence of solid textual evidence in emerging circumstances, the legal maxima are a collection of concepts derived from the scriptures to which scholars (hereinafter: fuqaha) return.<sup>492</sup>

The optimal combination of clear-cut ethical requirements and serviceable announcements is a selective combination of clear-cut ethical necessities and serviceable announcements. It is one of the legal maxims used by fans in first place;<sup>493</sup>

- (a) Other damage shall not be used to compensate for the damage.
- (b) Damage may not be repaired by causing similar damage.
- (c) What cannot be sold cannot be given as a gift.

These legal maxims are abstract guidance concepts that are unable to appropriately address the issue at hand. For example, in the case of a cooper bequest, asking whether an injury is caused to the donors can easily call the first maximum into question. Furthermore, is the "net benefit" of the substitution considered in conjunction with the "gross damage" involved in the proceedings (if any)?<sup>494</sup>

When compared to legal precedents, the abstract nature of legal maxima makes it difficult for them to define any specific situation. Proponents of the first position have a

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<sup>491</sup> Ibid 394

<sup>492</sup> Al Izz Ibn Abdul Salam, *Qawaid al Ahkam (Basics of Rules) Commented by Nazih Hammad and Othman Dharaniyah*, Dar al Qalam, Damascus.2000.

<sup>493</sup> Ibid.

<sup>494</sup> Ibid.



better opportunity to use previous cases in legal works (furu (al-fiqh) is used). The preceding cases allow researchers to cover them by analogy (qiyas) to organ exchange. One advantage of this approach is that it is evolved from earlier ancestor scientists; modern scientists are in a better stage due to initial work carried out by ancestors of scientists community as they don't have to venture into unexplored.<sup>495</sup> However, issue in this method is that scholars can infer a false analogy argument in their zeal, starting from precedents, to move as closely as possible to a text, consequentially reaching to an unfitting legal decision on the matter in question. Here we discuss two previous cases filed by lawyers.<sup>496</sup>

The cause of human dignity, which arose from the Qur'an, requires that humans not be used as a means to an end. The mediaeval (fuqaha) declared forbidden any therapeutic use of human teeth, hair, and bones, except for the owner of these objects, which was based on the Qur'an. Professor Al-Bu't is a Syrian. (d. 2013), the examples in mediaeval law books refer to human cosmetic developments (tahsn) and should not be confused with current intrusive life-saving expertise that falls short of the extent of need (darura). If necessary, Islam allows for certain exceptions to the rules. The examples are true in the sense that no one supports cosmetic repair of human residues; however, they are not exact instances of organ replacement (Al-Bu t. I 1988). The argument of A. d. Arura has been labelled as an "offender of all laws."<sup>497</sup>

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<sup>495</sup> Elgariani FS. *Al-Qawaid Al-Fiqhiyyah (Islamic Legal Maxims): Concept, Functions, History, Classification and Application to Contemporary Medical Issues. A Thesis for the Degree of Doctor of Philosophy in Arab and Islamic Studie*'s, Exeter. (2012).

<sup>496</sup> Ibid.

<sup>497</sup> Daniel Brown, "Islamic Ethics in Comparative Perspective," *The Muslim World* 89, no. 2 (April 1999): 181–92, <https://doi.org/10.1111/j.1478-1913.1999.tb03677.x>.

## 4.18 Organ Donor

Retrieval and transplantation of human organs with compensation in four ways;<sup>498</sup>

- (a) A person's skin is removed and then transplanted back into their body.
- (b) Organ donation involves removing a person's organs and transplanting them into another person, similar to a blood transfusion, to replace damaged organs.
- (c) Organ extraction and transplantation from one person to another for medical purposes.
- (d) Organ retrieval and transplantation from a deceased person into a living person for life support.

Organ retrieval and transplantation is possible in; Eyes, liver, kidney, heart, lungs, veins from legs into heart, intestinal reconnection after removing defective parts, joints, skin, cells, bone marrow, pancreas.

It is pertinent to mention here that I am discussing organ transplantations into living persons, and organ retrieval and transplantation from brain-dead persons into living persons. Organ retrieval and transplantation from within the same person is not disputed and it is unanimously allowed.

### 4.18.1 Conditions for Organ Recovery and Transplantation

For organ retrieval and transplantation there are five general conditions;

- (a) There must be a necessity.
- (b) There is no life-threatening danger to the donor.
- (c) There must not be permissible replaceable available (plastic organs, others).
- (d) The transplant has a better chance of working than it does of failing.
- (e) Without any pressure or interference, the donor donates his or her organ(s).<sup>499</sup>

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<sup>498</sup> Ibid.

<sup>499</sup> Bakr Ibn 'Abd Allah Abu Zayd, *Fiqh Al-Nawazil*. Is1 Ed. Vol. 1/2, 47." n.d.

#### 4.19 The Human Body and Medical Procedures

According to Shari'ah, the following medical actions or procedures are permissible:

- (a) Simple operations, such as appendix removal or male circumcision, are all permissible without debate or disagreement among scholars.
- (b) Blood transfusion, organ transfer within the same person, and transplantation from a living person into another person are all examples of operations that involve an exchange between two or more people. Transplantation of a dead person's organs into a living person (for example, a brain dead person).<sup>500</sup>

Human dissection is permitted for any of the following four reasons:

- (a) To uncover murderous and criminal activity.
- (b) To uncover disease and illness.
- (c) To learn medicine and teach.
- (d) To carry out a life-sustaining operation.<sup>501</sup>

#### 4.20 Muslim Doctor-Muslim Patient Relationship

The Muslim doctor and the Muslim patient have two things in common:

- (a) Firm belief in God.
- (b) The belief is that there is a cure for every illness.<sup>502</sup>

However, the person should be provided with the proper cure as required; by the Muslim doctor. According to Fazlur Rahman, the doctor being an agent says, that: "The Muslim doctor should believe that the act of healing is not entirely his, but depends on God's will".<sup>503</sup> The Prophet (SAW) said; as narrated by Abu Huraira, "For each disease, there is a

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<sup>500</sup> Bakr ibn 'Abd Allah Abu Zayd, *Fiqh al-Nawazil*. Is "ed. vol. 1-2, 23.

<sup>501</sup> *ibid*

<sup>502</sup> Abdulaziz Sachedina, 'Right to Die? Muslim Views about End of Life Decisions'. (June 7, 2005), 5.

<sup>503</sup> Fazlur Rahman, "Health and Medicine in the Islamic Tradition," (Chicago: Kazi Publications Inc., 1998), 66-77; Emilic SavageSmith, *Islamic Culture and the Medical Arts* (Bethesda: National Library,"

cure, and when the right treatment is given, the disease is cured by the will of Allah”<sup>504</sup> Allah Almighty says in the Quran;

“إِنْ تَوَلَّوْا فَقَدْ أَبْلَغْتُكُمْ مَا أَرْسَلْتُ بِهٖ إِلَيْكُمْ وَيَسْتَخْلِفُ رَبِّي قَوْمًا غَيْرَكُمْ وَلَا تَدَّ

ضُرُونَا شَيْئًا إِنَّ رَبِّي عَلَىٰ كُلِّ شَيْءٍ حَفِيظٌ”

*“Oh, mankind! There has come to you a direction from your Lord and a healing for the disease in your hearts, and for those who believe, a guidance and mercy”.*<sup>505</sup>

To acknowledge and recognize the Muslim doctor’s part, we should refer to the texts mentioned in the Holy Quran and Hadith of the Prophet relating to any illness, cure, and treatment. To find religious comfort for the tolerating and suffering victim, the Muslim doctors were not only confined to treat physical illness, but also helped the patient to find spiritual comfort. Because the righteous disease and its treatment are mentioned in different places of the Holy Quran. The medical doctors not only experience life and death cases but also encounter unpredicted results, which suggests that medical officers are more aware of Allah’s will and power, where destiny plays the main role in it.

Medicine has been recognised as a science that includes human revolution, surveillance, and discovery since the beginning of Islam 1400 years ago. Modern Medical Sciences have been recognised and admired throughout history, and have often been associated with religious leadership and seen as relevant to miracles.<sup>506</sup>

According to medical doctors, there is a close relationship between philosophy and medicine, this relationship has distinguished the medical history of Islam from others. In the past, medicine was frequently associated with philosophical knowledge. Historically,

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<sup>504</sup> Muhammad Muhsin Khan, Sahi Bukhari, “Arabic- English Translation,” Book 71, volume 7, “Medicine” number 582, Darulislam Publishers, Riyadh.

<sup>505</sup> Al Quran, Ayah Hud, 10; 57.

<sup>506</sup> Fazlur Rahman, “Health and Medicine in the Islamic Tradition,” (Chicago: Kazi Publications Inc., 1998), 66-77; Emilic SavageSmith, “Islamic Culture and the Medical Art”s (Bethesda: National Library,”

however, the Muslim doctor's prognosis considered the patient's spiritual and psychological well-being, are also clinical aspects of physical illness.<sup>507</sup>

#### **4.21 Ensuring Ethical and Responsible Deceased Organ Donation; Islamic and Modern Medical Practice**

Concerning medical responsibilities in Islam, The Prophet (PBUH) stated, "Whoever treats without information of drugs is answerable for his errors".<sup>508</sup> Ibn Rushd, who summarized the topic of scientific responsibilities in his book *Bidyat Al Mujtahid Wa Nihayat Al-Muqtasid*, stated "if the medical doctor commits mistakes by his actions and that health practitioner becomes recognized in his performance as an expert doctor, he isn't always responsible however is needed to pay the fee of 1/3 of the charges, from his very own pocket."<sup>509</sup> However, if a health practitioner does not have medical understanding and commits mistakes, he needs to be punished with the aid of slashing, imprisonment, and by paying complete compensation to the victim as "diyah".<sup>510</sup>

Furthermore, a person who tries to deal with human beings without previous scientific information and enjoy is considered incapable and inefficient in any society. In this regard, Ibn Qayyim Al-Jawziyyah<sup>511</sup> defines the five classes of medical doctors, therefore:

- (a) The scientific physician possesses complete clinical know-how and is skilled in imparting scientific services. Furthermore, sufferers and the network at big recognize his/her clinical understanding through overall performance. Ibn Qayyim says if a patient die after permitting due to this health practitioner's

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<sup>507</sup> Ibid.

<sup>508</sup> Muhammad Ibn Yazid Abu 'Abd Allah Ibn Majah, "*Sunan Ibn Majah*". 2nd Cd. Vol. 2. 1148; Muhammad Ibn Abi Bakr Ibn Qayyim Al-Jawziyyah, *Al-Tibbal-Nabawi* (Beirut:Mu Assasat Al-Risalah,1991), 132-35."

<sup>509</sup> Muhammad Ibn Ahmad Ibn Rushd, "*Bidayat Al-Mujtahid Wa- Nihayat Al-Muqtasid*." Vol.4 (Cairo: Dar Al-Salam, 1995), 2206.

<sup>510</sup> Ibid

<sup>511</sup> He was a prominent Islamic jurist, theologian, and spiritual writer in mediaeval times. Belonging Hanbali school of thought.

movements, he/she will be able to no longer be responsible and there's no blame on him/her.

- (b) An untrained character who treats people without scientific understanding and reveal in. If a person dies as a result of this individual's movement, Ibn Qayyim says they will be completely responsible and need to pay a complete repayment— for the reason that victim in true faith thought that the man or woman treating him/her turned into a real medical doctor with enough expertise in medication. However, if the sufferer had recognized prior that the individual treating him/her is ignorant and treating him on assumption and approximately medication and consequently, allowed to be treated utilizing such an ignorant man or woman, the person in question will not be chargeable for any accidents bobbing up from the intervention and could now not be required to pay any repayment to the victim.
- (c) A scientific health practitioner who's knowledgeable, skilled, and professional, however who by way of risk causes sudden mistakes through his/her fingers in ibn Qayyim's view could be chargeable for the mistakes/damages at the victim. If the error is equal in damages to more than one 1/3 beneath Islamic regulation, he/she has to pay full reimbursement (diyah). If less than one-0.33 (1/3) Ibn Qayyim says that the amount must be paid from his/her very own pocket or both the government or the rulers (in our case the clinic management) ought to pay the victim.
- (d) An expert scientific doctor who acts in precise faith, but who prescribes the wrong medication to a patient who sooner or later dies as a result. In such a case, Ibn-Qayyim says the blood cash of the dead person must be paid by employing the government due to the fact the medical doctor obtained the

permission of the patient ahead. Another perspective holds that the medical doctor ought to pay reimbursement from his/her pocket to the victim's circle of relatives. In modern-day global, it is the establishments (i.e., hospitals, government ministries, personal health businesses, coverage agencies, and so forth.) no individual doctors per se, who for the most part shoulder the financial obligation springing up from instances of clinical malpractice and other wrongdoing within the scientific professions.

- (e) A professional clinical physician who acts professionally, however who does now not get the permission of his/her affected person or the permission of the patient's guardians, and consequently makes some mistakes.

Ibn Qayyim<sup>512</sup> says this medical doctor could be chargeable for his/her errors and ought to pay the repayment to the victim. A few other critiques say the health practitioner will now not pay any reimbursement.<sup>513</sup> Looking at the above categories of scientific medical doctors as defined with the aid of Ibn Qayyim Al-Jawziyyah for my part, it's far feasible to say there may be unanimous agreement that a scientific doctor who acts professionally will not be responsible or charged beneath the following conditions:

- (a) The medical doctor who's informed and skilled and who acted with medical knowledge, not via guess imaginations. Furthermore, he did not urge longer to try administering the remedy, to end up famous without medicine information.
- (b) The health practitioner who practices medication and strictly follows the rule of clinical processes, knowing that in any other case he/she may be responsible for their errors

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<sup>512</sup> In Sunni tradition, Imam Ibn al-Qayyim was a major mediaeval Islamic jurist, theologian, and spiritual writer. Belonging to the Hanbali school of thought.

<sup>513</sup> Muhammad Ibn Abi Bakr Ibn Qayyim, "*Al-Jawziyyah, Al-Tibb Al-Nabawi*", 135-46.

- (c) If the affected person is a minor or disabled person character, the scientific physician should get the affected person's permission or the permission of the guardian, which includes the instantaneous circle of the relative. In line with most Sunni Muslim opinion, the health practitioner must get the immediately own family's permission, due to the fact the person has possession over his/her frame and that ownership is transferred to his/her immediately own family. However, that is controversial,

Due to the fact, different Sunni Muslim opinion holds that the God on my own owns the human body. For my part, the bodily frame belongs to God and humans both.

The Islamic Organization for Medical Science has established the following four medical responsibilities.

- (a) The primary obligation of the medical doctor is to have a clinical diploma in the subject they're operating in and to be certified in that precise scientific field, passing all essential examinations related to his/her career, and receiving a certificate of permission to exercise from the ministry of fitness inside the united states of employment.
- (b) The medical health practitioner is chargeable for getting the permission of the patient before treatment through signing a shape of consent.
- (c) The scientific health practitioner's aim needs to be to treat people, now not to harm them.
- (d) Medical doctors must now not dedicate essential errors, which are not regular inside the field of medicine.

## 4.22 Conclusion

Organ transplantation is a permissible action in Islam for the sick, according to my research findings. An altruistic approach to deceased organ donation would involve viewing it as an act of generosity and kindness towards others. This perspective would emphasize the idea that by donating one's organs after death, individuals can help save the lives of others and improve their health and well-being. Adopting an altruistic approach to organ donation requires a willingness to consider the needs and well-being of others, even after one's own death. It can involve making the decision to sign up for organ donation and communicating that wish to family members, so that it can be carried out according to one's wishes. It's important to note that organ donation is a personal decision, and everyone's motivations for doing so may be different. However, viewing organ donation as an act of altruism can help to promote a culture of generosity and kindness, and encourage others to consider the positive impact that their decision to donate could have on the lives of others. On the same side Voluntarism, refers to the idea that people are free to act according to their own will and that their actions are motivated by their own choices and decisions. Voluntarism emphasizes the role of personal choice and agency in shaping an individual's behaviour and is often associated with the concept of individualism. Altruism and voluntarism are philosophical concepts that relate to an individual's motivations and actions towards others. Sunni Muslim Fiqh Academies and religious institutions all over the Muslim world are unanimous on this issue. When it comes to the availability and procurement of organs for transplantation, however, Sunni Muslim scholars stipulate that organs must be obtained through donation processes, either through the will of the deceased person or with the permission of the deceased person's family members. If the local authorities (who become that person's caretaker) decide so, it is permissible to use the organs of an unknown dead person (i.e., a stranger or someone without any identifiable family members). In most Muslim countries, it

is acceptable for a living person to donate his or her organs under certain conditions, such as the prospective donor not harming himself in the process. If the sick person is unable to locate the required organ without resorting to payment, it is permissible in Islam for that person to purchase the required organ for life-sustaining purposes only in extreme circumstances. However, the majority of Muslim scholars have deemed the commercialization and commodification of human organs to be completely prohibited in Islam, and thus the buying and selling of organs for profit is prohibited in most Muslim countries. In fact, even in dire circumstances, a number of prominent Sunni Muslim scholars have categorically rejected the idea of buying and selling organs. Organ transplantation is a form of treatment, so it is permissible and allowed for the common good and public good, as well as by reason and religion. Organ donation can occur between living people or between deceased people and living people if the former's death was stipulated in a will or documented consent prior to the latter's death is available. The issue of organ availability is a current issue that humanity as a whole is dealing with. To solve this pressing dilemma, all researchers in every branch of science, from Muslim and non-Muslim traditions alike, must collaborate with other colleagues such as philosophers, theologians, ethicists, jurists, and human-rights advocacy groups. The answer will be found in figuring out how to reconcile and harmonise the dictation of Islam (and religion in general) with the constant advancement of medical science and technology from one epoch to the next. In my perspective, the approach of altruism can be seen as different facets of the same overarching idea. For example, altruism can be seen as an expression of humanism, as it demonstrates a concern for the well-being of others, while voluntarism highlights the importance of personal choice and agency in shaping an individual's behaviour.

## CHAPTER 5: BALANCING RELIGIOUS BELIEFS AND MEDICAL NECESSITY: THE ETHICS OF DECEASED ORGAN DONATION IN ISLAM

### 5.1 Introduction

The intersection of Islamic teachings on organ donation and the medical necessity of organ transplantation presents a complex ethical landscape that requires careful consideration and examination, particularly within the Muslim community, where beliefs and cultural practices play a significant role in the decision-making process surrounding deceased organ donation. This chapter explores how does Islamic teaching on organ donation balance with the medical necessity of organ transplantation, and what ethical considerations must be taken into account in the Muslim community for deceased organ donation? I relied on classical and contemporary Muslim scholars, as well as medical, theological, and ethical experts, for this chapter. Some of these scholars support and encourage organ transplantation and donation when medically necessary. This chapter aims to include arguments from both pro-and anti-organ transplantation scholars. Furthermore Muslim beliefs on deceased organ transplantation under different circumstances are also discussed in this chapter. The readers will also be helped to understand how Muslim opinions on this topic have different opinions. Organ transplantation is a novel topic for academics, especially ethicists, jurists, and medical practitioners, as well as human rights campaigners, legislators, political scientists, and social activists in Muslim nations.

Transplantation, as life-sustaining treatment, is in line with Islamic teachings, which encourage people to seek medical help. "O servants of God, seek treatment for yourselves,"<sup>514</sup> the Prophet (SAW) said, "God has created sickness as he has created a treatment for that

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<sup>514</sup> Muhammad Ibn Riisa Abu Isa Al-Tirmidhi, *Sunan Al-Tirmidhi*, 2nd Ed. (Istanbul: Dar Sahnun, 1992), 3: 383; Muhammad Ibn Yazid Abu 'Abd Ali a Ibn Majah, *Sunan Ibn Majah*, 2<sup>TM</sup>, Ed. (Istanbul: Dar Sahnun, 1992),2:1137.

sickness." Arab nomads once asked the Prophet (SAW) if they should seek treatment for sickness or just trust in Allah alone. "God did not create sickness without creating treatment for that sickness," the Prophet (SAW) replied, "and he is wise who knows this and ignorant who does not."<sup>515</sup> "Every sickness or disease has a treatment or cure," the Prophet (SAW) said. With God's help, if the cure reacts with the illness, the person will be healed."<sup>516</sup>

The Prophet (SAW) was also asked, "Tell us about the drugs we can take for treatment and the precautions we're taking by having recitation and saliva blown on us, Are these obstructing God's already made decision?" "It is part of what God did rule," The Prophet (SAW) replied.<sup>517</sup> These Ahadith also show that treating oneself is permissible.

Organ transplantation is a form of treatment, so it is permissible and permitted by reason and religion and it is not only good for people but also for the society as a whole. Organ donation can take place between two living individuals or it can be from a deceased person to a living person if the former's death was stipulated one and his consent is available in form of will i.e. Verbal or documented prior to the latter's death.<sup>518</sup>

## **5.2 Organ Procurement from Deceased: A Current Problem**

Human organ procurement, with its complex process, incredible healthcare benefits, and ability to take organs from the dead to save the living, is a novel practice that could not have been predicted or debated in traditional Islamic legal works. As a result, modern scholars have had to adapt the classical Islamic concept of legal decision-making from source texts to a modern context.<sup>519</sup>

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<sup>515</sup> Ibn Majah, *Sunan Ibn Majah*, 2:1137-1138,"

<sup>516</sup> Muslim Ibn Hajjaj, *Sahih Muslim*, 2nd Ed. (Istanbul: Dar Sahnun, 1992), 2:1729; Ibn Majah, *Sunan Ibn Majah*, 2: 1138.

<sup>517</sup> Al-Tirmidhi, *Sunan Al-Tirmidhi* 3:383; *Ibn Majah, Sunan Ibn Majah*, 2:1137-38.

<sup>518</sup> Al-Qaradawi, *Fatawa Mu 'Asirah*, 530-540.

<sup>519</sup> Shahid Athar, 'Contemporary Issues in the Practice of Islamic Medicine,' *Journal of the Islamic Medical Association of North America* 28, No. 4 (November 1, 1996), <https://doi.org/10.5915/28-4-8095>

Transplantation of organs, as we know it today, did not exist in the time of Classical Muslim jurists. Nonetheless, the use of the human body in diagnosis and treatment procedures was addressed by various Fiqh schools.<sup>520</sup> Because the rule derived from Classical jurists does not address the issue of organ transplantation's legality, however, it does elaborate on their views on the use of human organs, thereby providing some benefit to today's scholars; in referring to the issue of organ transplantations.<sup>521</sup>

### 5.3 The Islamic Schools of Law on Deceased Organ Donation

Hanafi School believes that using human or animal bones in medical procedures is unethical because it is illegal to gain any benefit from them.<sup>522</sup> Furthermore, selling anything extracted from the human body such as hair, blood and nails etc. are prohibited. The logic behind it is that any organ extracted from human body is considered to be part of the body and thus must be buried with the body. It is said that the amputation of one limb from body would necessitate the payment of full blood wit because man's noble status allows that, amputation of one part of the body to be equated with the amputation of the entire body.<sup>523</sup>

Malikis advocates that all parts of the human body, including those who regenerate themselves like hair and nails are sacred according to the Maliki. As a result, any use of these parts would be regarded as desecration of the mortal body's. It is stated in one of their scholarly texts that using the human body in a demeaning manner is unacceptable, just as eating human flesh is unacceptable even at the height of famine.<sup>524</sup>

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<sup>520</sup> Ibid.

<sup>521</sup> Hossam E Fadel, 'The Qur'an and the Bio-Psychological Aspects of the Elderly,' Journal of the Islamic Medical Association of North America 20, No. 2 (April 1, 1988), <https://doi.org/10.5915/20-2-13269>

<sup>522</sup> Abul Fadl Mohsin Ebrahim, *Organ Transplantation: Contemporary Islamic Legal and Ethical Perspectives*, Paperback, A. S. Noordeen, January 1, 1998 ISBN-10 9830650626.

<sup>523</sup> Ibid.

<sup>524</sup> Ibn Juzayy, Muhammad Ibn Ahmad, *Qawanin Al-Ahkam Al-Shar'iyah Wa Masa'il Al-Furu' Al-Fiqhiyah Ibn Juzayy*, Muhammad Ibn Ahmad. 1968."

The Shafi School forbade any man from severing a part of his body and offering it to a hungry person to eat; this is in line with the Maliki's viewpoint. This is because, while relieving the pain and suffering of others, the individual is jeopardizing his own life. This rule is incompatible with the prohibition on killing of animals and using them as medicine for personal gain.<sup>525</sup>

The Hanbali school of thought points out that killing another man, whether Muslim, Kafir or a Dhimmi is not permitted for those whose life is in jeopardy due to extreme hunger. Furthermore it also states that even severing a portion of someone's body for the purpose of eating by hungry is not permissible. This rule is based on the equal dignity of all people's lives.<sup>526</sup>

In Shia school of law It is stated in this school that it is forbidden to consume any part of a living man because doing so would put the latter's life in grave danger.<sup>527</sup>

Major similarities between the various schools of fiqh can be seen in the discussion above. Concerning the use of the human body. Even when you're at your wit's end. All of these rulings appear to revolve around the sacredness of mortal life/physique, as well as the implication that the mortal physique is a trust (Amanah) bestowed upon us by the creator, and it must be protected from harm irrespective of this that it benefit others.

It is important to remember that organ transplantation was virtually non-existent in their time, the views held by these classical schools about the use of the human body do not necessarily denounce organ transplantation.<sup>528</sup>

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<sup>525</sup> Adam Adebayo Sirajudeen, *Organ Transplant in Islamic Perspectives*, LAP Lambert Academic Publishing (March 25, 2011), ISBN-10; 3844323341.

<sup>526</sup> Ibid.

<sup>527</sup> Sayyid Muhammad Rizvi, *Islamic Views on Organ Donation & Transplantation*, Al-Furqan, Vol. 1, 26 Jumadi I 1427, 22 June 2006.

<sup>528</sup> Ibid.

## 5.4 Protecting the Gift of Life: An Islamic Approach to Deceased Organ Donation Legislation

Today's Muslim scholars are generally in favour of organ transplantation. They consider such medical procedures to be permissible and just, similar to many other medical procedures aimed at curing life-threatening diseases. The primary concern of these scholars is Maqasid Shari'ah<sup>529</sup> i.e. promoting human health and desires to protect human life. As Allah has also said that:

”مِنَ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا ۗ وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ بَعْدَ ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ“

*“That is why we wrote for the Children of Israel that whoever kills a soul, except a soul slain, or causes sedition in the earth should be considered to have killed all mankind; and whoever saves it should be considered to have saved all mankind. Our Messengers brought them proofs, and many of them went on to commit atrocities on the earth.”<sup>530</sup>*

In agreement with nearly all major Arab intellectuals and current events. According to Indian and Pakistani scientists, the transfer and bestowment of human body parts is permitted on the following grounds.

The well-known principles of Muslim legal philosophy, which are based on the pearls of wisdom of the Qur'an and Sunnah that permits use of illegal items in time of great

<sup>529</sup> The higher objectives of the Shari'ah rules, whose observance facilitates the normal functioning of society by enhancing the public good, are known as maqasid al-Shari'ah.

<sup>530</sup> Al Quran, Al Maida, 32.

necessity and emergency to save human life. Therefore when one's life is at risk due to hunger or thirst the ban on eating pork or drinking alcohol is lifted. Allah declares:

"إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالْدَّمَ وَالْخِنْزِيرَ وَمَا أُهِلَّ بِهِ لِغَيْرِ اللَّهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ"

*"He has only forbidden you to eat dead animals, blood, swine flesh, and anything else that has been dedicated to a god other than Allah. But there is no sin on him who is forced [by necessity], neither desiring [it] nor exceeding [its limit]. Indeed, Allah is Merciful and Forgiving".<sup>531</sup>*

To protect your natural life, the Qur'an also makes the expression of distrust (kufri)

Allah declares:

"مَنْ كَفَرَ بِاللَّهِ مِنْ بَعْدِ إِيمَانِهِ إِلَّا مَنْ أُكْرِهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ وَلَكِنْ مَنْ شَرَحَ بِالْكُفْرِ صَدْرًا فَعَلَيْهِمْ غَضَبٌ مِنَ اللَّهِ وَلَهُمْ عَذَابٌ عَظِيمٌ"

*"Anyone who, after accepting Allah's faith, expresses unbelief, except under duress, while his heart remains firm in faith."<sup>532</sup>*

The Fiqh principle, which is based on the above Quranic guidelines, states:

*"Necessity makes prohibition legal."<sup>533</sup>*

*"It is permissible for a person dying of hunger to consume the meat of another human," says Imam Shafi'i."<sup>534</sup>*

The above verses of Qur'an clearly indicates that impure, sinful, illegal and unhealthy items are legalised in emergency situations. Thus keeping this point in consideration, the

<sup>531</sup> Al Quran, Al Baqrah, 2;173

<sup>532</sup> Al Quran, Al Nahal 106.

<sup>533</sup> Muhammad Abu Zahrah, "Sources, Usul Al-Fiqh, Islamic Law," (Qahirah: Dar Al-Fikr, 1997), 359.

<sup>534</sup> Ibid,

Muslim scholars stated that if someone's life is in jeopardy and he is in desperate need of transplantation, then in that scenario organ transplantation can be permitted.

Organ transplantation falls into the same category as in the preceding verse as a life-saving. However it should be noted, that carrying out such a procedure is unethical if it put the life of donor in any harm or danger. Furthermore, it must be quantified that Islam not only considers the interests or welfare of single individual but also safeguard interest or welfare of mankind as a whole. As a result, the following legal rules or maxims exist.<sup>535</sup>

- (a) "Necessity makes the illegal lawful."
- (b) "When two interests collide, let the one that benefits the most take precedence."
- (c) "Select the lesser of two evils"

The above mentioned rules are based on the concept of establishing people's overall interest along with balancing its negative impact. As a result, if the negative consequences outweigh the benefits, it would be prohibited in Islam.

Organ transplantation is usually divided into two types:

- (a) living donors
- (b) deceased donors

In case of living donors organ donation is permissible in Islam as far as it is for the benefit of someone and there is no harm to the life of donor, thus a relief may be brought to those who are in pain and suffering.

Muslim scholars agree that it is permissible in the case of deceased donors to donate an organ to anyone who is in need but it is important that individual has embraced it while he was alive or the closest family member has approved it. It will not be considered as

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<sup>535</sup> Ibid.

violation of the corpse sanctity. Only under such circumstances Islamic researchers has determined that organ donation from a dead person to a living person was acceptable.

### 5.4.1 Absolute Necessity

In defining dire necessity, Muhammad al-Salaml cites those 'Ulama' who say that 'dire' means hopelessness, despair, danger, or in simple words its fear, anxiety, or terror; and that it necessarily means the condition of essential or indispensable life preservation, for example, if you are hungry and unable to go, ride, or move because you are afraid of remaining behind or contracting a life-threatening contagious disease.<sup>536</sup> In these cases, Al-Salaml claims that the use of human flesh can be justified; however, it adds that the danger may not be immediate; rather, mere threat of it is enough for the victim to recognize the looming danger.<sup>537</sup>

#### (a) Absolute Necessity in the Case of Illness

When a person is in a life-or-death situation, he or she must choose between death and doing something that is forbidden, in other words, to save one's life or to sin. In this case, the Qur'an permits a person to engage in forbidden behaviour in order to save his life. The Quran "Precisely" says,

"وَمَا لَكُمْ أَلَّا تَأْكُلُوا مِمَّا ذُكِرَ اسْمُ اللَّهِ عَلَيْهِ وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا  
أَضْطَرُّرْتُمْ إِلَيْهِ وَإِنَّ كَثِيرًا لَلْيَظْلُونَ بِأَهْوَائِهِمْ بِغَيْرِ عِلْمٍ إِنَّ رَبَّكَ هُوَ أَعْلَمُ  
بِالْمُعْتَدِينَ"

*"What should cause you to avoid eating that upon which the name of Allah has been invoked, while he has spelled out to you all that He has made unlawful for you, except that to which you are compelled by extreme necessity? Surely many misguide people*

<sup>536</sup> Muhammad Al-Mukhtar Al-Salami, "Zara 'at Khalaya Al-Jihaz Al-'Asabl Wa Khassatan Al-Mukh," in *Al-Ru'yah Al-Islamiyyah // Zara 'Af Ba'd Al-A 'Da\* Al-Bashariyyah*, 6, 115." N.

<sup>537</sup> Ibid.

*based on their desires without knowing. Surely, your Lord is the best knower of those who cross the limits.*"<sup>538</sup>

All Sunni Muslim scholars agree that if a person is in desperate need, he or she has the right to save his or her life by doing forbidden things.<sup>539</sup> Human beings must be free of difficulties and affliction and their lives, wealth, and religion must be protected from destruction. In other words, necessity implies that a burden is weighing down on human beings, forcing them to fear death or the loss of body parts if they do not do something forbidden.<sup>540</sup>

Furthermore, dire necessity can refer to a dangerous situation that has caused a person to be afraid of dying, losing an organ, or intellect. At that point, the person is permitted to use a prohibited substance to save his or her life or organ. For example, Islam prohibits many things, some of which are specifically mentioned in the Qur'an.

*"إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَالْخِنْزِيرَ وَمَا أَهَلَ بِهِ لِغَيْرِ اللَّهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ"*

*"He has forbidden to dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limits] - then indeed Allah is Forgiving and Merciful."*<sup>541</sup>

<sup>538</sup> Al Quran, Al An'am, Ch 6:119.

<sup>539</sup> Muhammad Al-Mukhtar Al-Salami, "Zara 'at Khalaya Al-Jihaz Al- 'Asabl Wa Khassatan Al-Mukh," in Al-Ru'yah Al-Islamiyyah //- Zara 'Af Ba'd Al-A 'Da\* Al-Bashariyyah, 6, 115.

<sup>540</sup> Ibid.

<sup>541</sup> Al Quran, Al Baqra, 2:173.

«قُلْ لَا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلَّا أَنْ يَكُونَ مَيْتَةً أَوْ  
 دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقًا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ فَمَنْ  
 اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ رَبَّكَ غَفُورٌ رَحِيمٌ»

*“Say, I do not find, in what has been revealed to me, anything (out of the cattle under discussion) prohibited for anyone who eats it, unless it is carrion or blood that pours forth or flesh of swine- because it is impure-or there be an animal slaughtered sinfully by invoking on it the name of someone other than Allah. However, if someone is compelled by necessity, neither seeking pleasure nor crossing the limit, then your Lord is Most-Forgiving, Very-Merciful.”<sup>542</sup>*

«حُرِّمَتْ عَلَيْكُمْ الْمَيْتَةُ وَالْدَّمُ وَلَحْمُ الْخِنزِيرِ وَمَا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ وَالْمُنْخَنِقَةُ  
 وَالْمَوْقُوذَةُ وَالْمُتَرَدِّيَةُ وَالنَّطِيحَةُ وَمَا أَكَلَ السَّبُعُ إِلَّا مَا ذَكَّيْتُمْ وَمَا ذُبِحَ عَلَى  
 النُّصُبِ وَأَنْ تَسْتَقْسِمُوا بِالْأَزْلَمِ ۚ ذَٰلِكُمْ فِسْقٌ ۗ الْيَوْمَ يَبْسُ الَّذِينَ كَفَرُوا مِنْ  
 دِينِكُمْ فَلَا تَخْشَوْهُمْ وَاخْشَوْنِ ۗ الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتَمَمْتُ عَلَيْكُمْ نِعْمَتِي  
 وَرَضِيْتُ لَكُمُ الْإِسْلَامَ دِينًا ۗ فَمَنِ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرَ مُتَجَانِفٍ لِإِثْمٍ ۗ فَإِنَّ  
 اللَّهَ غَفُورٌ رَحِيمٌ»

*“Prohibited to you are dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah, and [those animals] killed by strangling or by a violent blow or by a head-long fall or by the goring of horns, and those from which a wild animal has eaten, except what you [can] slaughter [before its death], and*

<sup>542</sup> Al Quran, Al An`am, 6:145.

*those which are sacrificed on stone altars, and [prohibited is] that you seek decision through divining arrows. That is grave disobedience. This day those who disbelieve have despaired of [defeating] your religion; so fear them not, but fear Me. This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion. But whoever is forced by severe hunger with no inclination to sin – then indeed, Allah is Forgiving and Merciful.”*<sup>543</sup>

Prophet PBUH has forbidden the eating of un-slaughtered dead animals, wild animals, birds, domestic donkeys, or mules.<sup>544</sup> The prophet PBUH has also forbidden any wild animal which bites with teeth and birds which have nails to fight.<sup>545</sup> In one instance prophet PBUH has prohibited the consumption of domestic donkeys, however has allowed under necessity the eating of a horse.<sup>546</sup>

All relevant Qur'anic verses and authentic hadith that prohibit eating or using certain things have made exceptions to cover necessity, that is, dire necessity has allowed them to be used. When it comes to organ transplantation and dire necessity, it is permissible to procure or make a person's organs and transplant them into a needy recipient if a trustworthy Muslim or non-Muslim professional medical doctor has deemed that a person who is considered a potential donor will definitively die. This is because a living person is superior to a dead person, and as a result, the living is given precedence over the dead. In this case, organ transplantation is both a charitable act for the donor and a benefit for the recipient. If organ transplantation is viewed in society in this light (and is carried out in this manner), it is in the public interest. One of the most important Islamic rules is that when something is necessary,

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<sup>543</sup> Al Quran, AL M a`dah, 5:3.

<sup>544</sup> Muhammad Ibn Tsa Abu Isa Al-Tirmidhi, Sunan Ai-Tirmidhi. 2nd Ed. Vol. 3, 71.

<sup>545</sup> Ibid.

<sup>546</sup> Ibid.

it is permissible to use it; in this case, organ transplantation is justified because it will save the lives of many needy people who would otherwise die.<sup>547</sup>

Numerous Islamic rules support organ transplantation, for example.

- (a) To remove people's difficulties and afflictions
- (b) The use of prohibited things is permissible due to a lack of alternatives.
- (c) Every ailment has a severity and impact that can be measured.
- (d) Difficulties and burdens generate their solution and have a built-in resolution.

All of these rules demonstrate that Islam is not a static religion, but rather one that allows people to be free of their burdens and afflictions at all times. Furthermore, Islam protects Muslims' well-being and serves the public good. Sickness is regarded as an affliction and a burden in Islam, and thus must be eradicated. The following verses in the Qur'an provide ample examples in this regard:

“لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا<sup>٥٤٧</sup> لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ<sup>٥٤٨</sup> رَبَّنَا لَا تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا<sup>٥٤٩</sup> رَبَّنَا وَلَا تَحْمِلْ عَلَيْنَا إصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا<sup>٥٥٠</sup> رَبَّنَا وَلَا تُحَمِّلْنَا مَا لَا طَاقَةَ لَنَا بِهِ<sup>٥٥١</sup> وَاعْفُ عَنَّا وَارْحَمْنَا<sup>٥٥٢</sup> أَنْتَ مَوْلَانَا فَانصُرْنَا عَلَى الْقَوْمِ الْكَافِرِينَ<sup>٥٥٣</sup>”

*“Allah does not charge a soul except [with that within] its capacity.*

*It will have [the consequences of] what [good] it has gained, and it*

*will bear [the consequences of] what [evil] it has earned. ”Our*

*Lord, do not impose blame upon us of we have forgotten or erred.*

*Our Lord, and lay not upon us a burden like that which you laid*

*upon those before us. Our Lord, and burden us not with that which*

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<sup>547</sup> Wahbah Al-Zuhayli, *Nazariyyat Al-Darurat at- Shar 'Iyyab*, (Beirut: Al-Risalah Publication, 4th Cd, 1985), 81.

*we have no ability to bear. And pardon us, and forgive us, and have mercy upon us. You are our protector, so give us victory over the disbelieving people”.*<sup>548</sup>

”الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْتُوبًا عِنْدَهُمْ فِي التَّوْرَةِ  
وَإِنجِيلٍ يَأْمُرُهُم بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ  
عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ ۗ فَالَّذِينَ  
ءَامَنُوا بِهِ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنزِلَ مَعَهُ ۗ أُولَٰئِكَ هُمُ  
الْمُفْلِحُونَ ۝”

*“Those who follow the Messenger, the unlettered Prophet, whom they find written in what they have of the Torah and the Gospel, who enjoys. Upon them what is right and forbids them what is wrong and make lawful for the good thing and prohibits for them the evil and relieves them of their burden and the shackles which were upon them. So they who have believed in him honored him, supported him, and followed the light which was sent down with him - it is those who will be successful.”*<sup>549</sup>

<sup>548</sup> Al Quran, Al Baqra 2:286.

<sup>549</sup> Al Quran, Al Ar'af, 7:157.

"وَجَاهِدُوا فِي اللَّهِ حَقَّ جِهَادِهِ ۗ هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ ۗ مِلَّةَ أَبِيكُمْ إِبْرَاهِيمَ ۗ هُوَ سَمَّاكُمُ الْمُسْلِمِينَ مِنْ قَبْلُ وَفِي هَذَا لِيَكُونَ الرَّسُولُ شَهِيدًا عَلَيْكُمْ وَتَكُونُوا شُهَدَاءَ عَلَى النَّاسِ ۚ فَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَاعْتَصِمُوا بِاللَّهِ هُوَ مَوْلَاكُمْ ۗ فَنِعْمَ الْمَوْلَىٰ وَنِعْمَ النَّصِيرُ ۙ"

*"And strive for Allah with the striving due to him. He has chosen you and has placed upon you in the religion any difficulty. It is the religion of your father, Abraham. Allah named you "Muslims" before [in former scripture] and in this revelation that the messenger may be a witness over you and maybe witness over the people. So establish prayer and give zakat and hold fast to Allah. He is your protector, and excellent is the protector, and excellent is the helper."*<sup>550</sup>

"يُرِيدُ اللَّهُ أَنْ يُخَفِّفَ عَنْكُمْ ۗ وَخَلَقَ الْإِنْسَانَ ضَعِيفًا"

*"Allah intends to make things easy on you, and man has been created weak."*<sup>551</sup>

Particularly in these verses, it is demonstrated that Islam is not a static religion rather those who interpret it are static in their interpretations and conduct. Furthermore, the Prophet (PBUH) said, "Allah has sent me with an easy religion," "The religion of Islam is an easy religion," He (PBUH) also stated that "Make religion easy, do not make it difficult, encourage people, and do not discourage people," as narrated by Imam Ahmad.<sup>552</sup>

<sup>550</sup> Al Quran ,Al Haj, 22:78.

<sup>551</sup> Al Quran ,An Nisa,` 4: 28.

<sup>552</sup> Muslim Ibn Hajjaj, Sahih Muslim. 2<sup>o</sup> Ed. Vol. 1 (Istanbul: Dar Sahnun, 1992), 74.

## 5.5 Balancing Modern Medicine and Traditional Beliefs: The Islamic Prohibition on Deceased Organ Donation

The following point of views are compatible with the view of impossibility:

### 5.5.1 Sanctity of Human Life and Body

Man is entrusted with the responsibility of safeguarding and preserving his or her own life and body. The prohibition in the Quran prohibiting a man from taking his own life or the lives of others demonstrates this.

"وَلَا تَقْرَبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ

اللَّهُ إِلَّا بِالْحَقِّ ۗ ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ" ۝

*"And do not kill the soul which Allah has forbidden [to be killed] except by [legal] right. This has He instructed you that you may use reason."*<sup>553</sup>

According to the Prophet's final sermon (Khutbat-ul-Hajjatul Wida), the following statement spells out the role of Islam in the sanctity of life clearly:

"Your life and your property and your honor are sacred till you meet your lord."<sup>554</sup>

According to the authorities cited above, not only is every Muslim's life sacred, but his or her body is also sacred. "Breaking the bone of a dead person is equal (in sinfulness and aggression) to breaking it while a person is alive," according to a hadith attributed to Prophet Muhammad (PBUH)<sup>555</sup>

The holiness of the individual physique is not bound to life itself, in other words, the holiness of the individual physique embodies life's boundaries, because the human body remains sacred and revered even if no soul is connected to it, as this hadith demonstrates. When this would be interpreted as a form of aggression toward the human body, implying the

<sup>553</sup> Al Quran, Al An'am 6:151

<sup>554</sup> Sahih Muslim, Boook 15, Hadith no. 159.

<sup>555</sup> Sunan Abi Da'ud Hadith no. 3201 vol.2

body's mutilation,<sup>556</sup> than interpretation will be “how can one conduct organ transplantation by cutting a human body and extracting its organs, whether living or the deceased”.

### 5.5.2 The Human Body as an 'Amanah' (Trust)

Allah entrusted human beings with the duty of being Khalifah on earth, and thus he has given us a body in order for us to exalt Him on earth. The human body is merely God's gift to mankind thus it is to be cared for and protected to the best of our abilities. Wouldn't it seem logical if one holds a priceless commodity of someone else, he should return it in same condition he received it from the owner, if not in better condition when the owner requests its return? As Allah says in the Quran, man has been blessed with the best of everything.

“وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ  
وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا”

*“And we have certainly honoured the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what we have created, with [definite] preference.”<sup>557</sup>*

### 5.5.3 Preserving Dignity in Death: Examining the Islamic Perspective on Deceased Organ Donation

In case of death to a person, the dead body of the deceased is highly valued in Islam. This is evident in many Islamic rulings regarding the funeral and burial process, which requires great care and meticulousness in handling the corpse so as not to injure or mutilate the deceased. The Prophet (PBUH) had mentioned in the previous hadith;

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<sup>556</sup> Abul Fadl Mohsin Ebrahim, “Organ Transplantation: Contemporary Sunni Muslim Legal and Ethical Perspectives,” *Bioethics* 9, no. 3 (July 1995): 291–302, <https://doi.org/10.1111/j.1467-8519.1995.tb00364.x>.

<sup>557</sup> Al Quran, Al-Isra' verse 17:70.

“Breaking the bone of a dead person is equal (in sinfulness and aggression) to breaking it while a person is alive”<sup>558</sup>

Furthermore, every Muslim is obligated to bury human remains even if it is of a criminal or it is a single limb or nails, hair, or for that matter any other part of body in order to honour the sacredness of the human body.<sup>559</sup>

#### **5.5.4 Prohibition on the Use of Unlawful Things as Medicines**

The Prophet (PBUH) says in this regard: “Allah created the disease and also He has provided a cure. So treat yourselves with medicine, but do not treat yourself with forbidden things”.<sup>560</sup> This Hadith indicates that forbidden things cannot be used as medicine. As the Hanafi School has previously stated, the use of human and pig bones in medical care is abhorrent. It is mentioned in Sunan- Abu- Daud that the Prophet (PBUH) was asked about frogs that were used for curative purposes. He prohibited the butchery of frogs and said: “Their croaking is tasbih (glorification of Allah).”<sup>561</sup>

### **5.6 The Maqasad al-Shariah of Deceased Organ Donation**

Abu Hamid Al Ghazali<sup>562</sup> (d. 1111 CE), and later the Andalusian scholar Abu Ishaq al Shatibi<sup>563</sup>, pioneered the concept of maqsid al shar'a, or Muslim law determinations (d. 1388 CE). It states that the shari'a has five main goals: din (faith), nafs (life), nasl (posterity), aql (intelligence), and mal (means) (capital),<sup>564</sup> as agreed upon by the majority of Islamic researchers. Thus ingredient of medicines being prepared are heavily dependent on above

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<sup>558</sup> Sunan Abi Da'ud Hadith no. 3201 vol.2

<sup>559</sup> Abul Fadl Mohsin Ebrahim, “Organ Transplantation: Contemporary Sunni Muslim Legal and Ethical Perspectives,” *Bioethics* 9, no. 3 (July 1995): 291–302, <https://doi.org/10.1111/j.1467-8519.1995.tb00364.x>.

<sup>560</sup> Sunan Abi Da'ud Hadith No. 3207 Vol.2.

<sup>561</sup> Sunan Abi Da'ud, Kitab Al-Tibb, Hadith No. 3682.

<sup>562</sup> Imam Muhammad-i Ghazali was a Persian polymath who was one of Islam's most prominent and influential philosophers, theologians, jurists.

<sup>563</sup> Abu Ishaq Shatibi was an Andalusian Sunni Islamic law expert who lived from 720 to 790 A.H./1320 to 1388 C.E. He received his education from some of the most eminent scholars of his time. At a young age, he became a master of Arabic language, ijttihad, and research.

<sup>564</sup> Brown, Jonathan A. C. “*Maslahah*”. In John L. Esposito (Ed.). *The Oxford Encyclopaedia of the Islamic World*. Oxford: Oxford University Press, (2009).

mentioned five determinations directly or indirectly. As a result, anything that preserves one of these five determinations is considered valuable, whereas anything that subsidises to its detriment is considered corrupt, and avoiding it is considered moral.

Using the *maqsid al sharia* and the philosophies of *qiyas* (analogical reasoning), *'urf* (custom), *isthsan* (juristic preference), *istisab* (presumption of continuity), and *maslah mursala* (public interest considerations), definitive Islamic legal verdicts could be issued on any matter previously naive. Debating each of these values separately is inappropriate outside the scope of this piece. Though, the application of this exercise to a wide range of moral issues over has resulted in the manifestation of the *qawa'id fiqhiyya*, or Islamic legal sayings.

*Maqasad al shariah* is an Islamic doctrine that refers to the shariah's goals or objectives. It is linked to another important doctrine known as *Masalah*, which means public good, public interest, or public welfare.<sup>565</sup>

This doctrine is regarded as an important part of Islamic jurisprudence by various schools of thought. The ideology of public well-being pervades the organ donation debate, and it takes the form of altruism. Organ donation is unquestionably a noble and significant act. Because the medical field has been successful in achieving these goals for the betterment of the public good, organ procurement should be permitted.<sup>566</sup>

Many religious scholars have recently agreed to allow deceased people's organs to be donated.<sup>567</sup> Advocates of organ procurement cite the Quran and the Shariah to back up their case. Though there is some universal agreement within Islam on some moral values, Muslims are willing to comply with some requirements in certain situations. As a result, Islam is frequently based on a circumstantial, casuistic, end-grounded system of moral imperatives

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<sup>565</sup> Ibid.

<sup>566</sup> Thomas Eich, "Sherine Hamdy Our Bodies Belong to God. Organ Transplants, Islam, and the Struggle for Human Dignity in Egypt." Berkley / Los Angeles / London: University of California Press, 2012. Pp. 364. Paperback. ISBN: 978-9812387028. \$29.95., "Islamic Law and Society 21, no. 4 (September 22, 2014): 460–62, <https://doi.org/10.1163/15685195-00214p06>.

<sup>567</sup> Ibid.

that demonstrates the ability to deal with situations that arise in society when two undesirable conditions collide in a realistic manner.<sup>568</sup>

Moreover, the concept of “wellbeing of the public” gets paramount importance in Muslim bioethics.

The lesser evil is tolerable to prevent greater harm.<sup>569</sup> As per this belief, if somebody expires for the reason that a body part can't be obtained it dents an important principle “wellbeing of the public”, researchers bolster their view by reference to the Quran verse which stresses the unity of culture wherever the Quran states;

“أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا

وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا”

*“Whosoever killed a soul not to retaliate for a soul, nor for creating disorder in the land, then is it as if he had killed all man kinds. And whoso gave life to one soul, then it is as if he had given life to all man kinds”*<sup>570</sup>

## 5.7 Ijma on deceased organ donation

Ijma is a term used in Islamic jurisprudence to refer to the consensus of scholars on a particular issue. With regards to the issue of deceased organ donation, there is no clear consensus among Islamic scholars. However, many scholars and organizations within the Muslim community have come to the conclusion that deceased organ donation is permissible in Islam, as it is an act of saving a human life and falls under the principle of “preserving the

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<sup>568</sup> Jonathan E. Brockopp, “Islam and Bioethics.” *Journal of Religious Ethics* 36, no. 1 (March 2008): 3–12, <https://doi.org/10.1111/j.1467-9795.2008.00333.x>.

<sup>569</sup> Nils Fischer, “Dariusch Atighetchi, Islamic Bioethics: Problems and Perspectives,” *Journal of International Biotechnology Law* 5, no. 4 (January 2008), <https://doi.org/10.1515/jibl.2008.29>.

<sup>570</sup> Al Quran, Al Maida, Verse 32.

greater good" (maqasid al-shari'ah).<sup>571</sup> One of the leading organizations that has developed a position on this issue is the Islamic Fiqh Academy, an organization under the Organization of Islamic Cooperation. In 1985, the academy issued a resolution stating that "The transplantation of organs from the body of a dead person to a living one is permissible in principle, provided that it does not result in the mutilation of the dead body, that there is no objection on the part of the deceased, and that it does not entail any harm to the donor." Based on the above resolution and the principles of Islamic jurisprudence, it can be concluded that deceased organ donation is permissible in Islam under certain conditions. These conditions include:<sup>572</sup>

- The deceased person has given consent for organ donation either during their lifetime or through an advanced directive.
- The donation does not cause any harm or mutilation to the deceased person's body.
- The donation does not harm the recipient of the organ.
- The donation is done for the purpose of saving a human life.

It is important to note that individual opinions may vary among scholars and within the Muslim community, and that it is always recommended to consult with a knowledgeable Islamic scholar for guidance on such issues.

## **5.8 The Islamic Ethics of Deceased Organ Donation and Receipt: A Legal Perspective**

Different therapies have been discovered as modern medicine has grown exponentially. One of the therapies for final-phase organ let-down has been found to be

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<sup>571</sup> Al-Mousawi M, Hamed T, Al-Matouk H. Views of Muslim Scholars on Organ Donation and Brain Death. *Transplant Proc.*; 29(8):3217, 1997 and Khan FA. The Definition of Death in Islam: Can Brain Death Be Used as Criteria of Death in Islam? *Journal of Islamic Medical Association* 18(1):18-21, 1986.

<sup>572</sup> Albar M. Organ Transplantation: A Sunni Islamic Perspective, *Saudi Journal of Kidney Disease Transplantation* 2012, 23, P821.

effective: organ transfer.<sup>573</sup> According to the Hadith related to Usamah ibn Sharik, the people from all over the desert of Arab came to 'Apostle of Allah, and asked. Are we supposed to use medical treatment?' He replied, "Make use of medical care," because Allah has not created an illness that does not have a cure, with the exception of one disease, namely old age.<sup>574</sup> In its primary sources, the Quran and Hadith, Islam does not explicitly address the permissibility of organ transplantation and donation. As organ donation and transplantation are cutting-edge medical procedures. Organ donation is generally permissible in Islam. This is a significant blessing for those who are in pain and in dire need of organ to survive. This donation will not only relieve the patients but will also save their lives. Islamic researchers permitted the donation of organs from a deceased person to a living person if the deceased person voluntarily agreed to them while still alive or if his closest relative consented to them.<sup>575</sup>

### **5.8.1 Fatwa of Dr. Yusuf Al-Qardhawi**

“Someone who wishes to alleviate another human’s suffering, i.e. kidney disease, by donating one of his healthy kidneys, is allowed to do so in Islamic law. It is considered to be a good act and the donors will be duly rewarded. This is grounded on a Prophetic tradition in which the Prophet's peace be upon him is reported to have said that “those who show kindness on earth will receive God’s mercy and kindness.”<sup>576</sup> “On this, I believe that there is no prohibition from donating an organ to someone who needs it to cure him/her and to replace his/her non-functioning organ, i.e. the kidney or heart, etc. with the intent of giving

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<sup>573</sup> Savage-Smith, Emilie, *Islamic Culture and the Medical Arts*. Bethesda: National Library of Medicine, 1994.

<sup>574</sup> Muhammad ibn ‘Isa ibn Sawrah ibn Musa ibn Dahhak., *Al-Tirmidzi, Sunan al-Tirmidzi, Volume 4*, vol. 4 (Mustafa al-Babi al-Halabi: Egypt, 1975), 383.

<sup>575</sup> Ibid.

<sup>576</sup> Dr. Yusuf Al-Qaradhawi, “*Fataawa Mu’asarah*”, Third edition, Pg. 532-537. Issued By Fatwa Committee of Kuwait.

charity. And this is considered to be a continual (jariah) donation, and the rewards for the donors continue to be accrued for as long as some benefit from it.”<sup>577</sup>

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِنِّيرِ وَالْعَدْوَانِ وَأَنْتُمْ أَلَّهُ إِنَّ اللَّهَ شَدِيدُ

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This means: “*help one another in goodness and piety, and do not help one another in sin and aggression; and be careful of (your duty to) Allah; surely Allah is severe in requiting (evil).*”<sup>578</sup>

At another occasion to further highlight the importance of continuous (jariah) donation (prizes are earned for donors even after they die) The Blessed Prophet (PBUH) said:

"إذا مات ابن آدم انقطع عمله إلا من ثلاث صدقة جارية وعلم ينتفع به وولد صالح

يدعو له"

This means: “*All deeds of mankind will cease upon death, except three deeds; continuous charitable act, knowledge which had benefitted others, and a pious offspring who offers prayers for his/her parent.*”<sup>579</sup>

Keeping the above mentioned Hadiths and concept of spreading ease in one’s life easy it is convenient to say that organ transplantation from the deceased is legal if the transplant is originally intended to save the recipient's life and the deceased has his consent while he was alive. Most importantly, it will provide patients with a new way to live and relieve their pain and suffering. In short, Islam believes and recognises the fact to exercise his free will to donate or not and thus keep his or her choice known throughout his or her life. It

<sup>577</sup> Ibid.

<sup>578</sup> Al Quran, Al-Ma'idah, verse 2.

<sup>579</sup> Al Nawawi MS, *Al Majmoh Al Mohazab*, Al Mutteei M (ed) vol 1, AlFajalah press, Cairo, p 293.

is necessary to notify next-of-kin and household affiliates of any decision made by a Muslim to facilitate them in implementing his will after his or her death.

### **5.8.2 Fatwa of Dr. Muhammad Syed Tantawi, Mufti of Egypt**

“Live organ donations are permissible by consensus of jurists, whether the recipient is his relative or a stranger, as long as i.e. donation is considered to be of benefit by a trusted doctor. Taking organs from the body of a dead person to transplantation to someone who needs it, whether to save his life or to cure him, is permissible, and this ruling is also grounded on the consensus of jurists.”<sup>580</sup>

### **5.8.3 The Islamic Fiqh Academy<sup>581</sup>**

“Organ from the deceased can be transplanted to patients where the recipient's life relies on the transplantation, or where the recipient's continued normal body functions are reliant on transplantation. However, this rests on the approval of the deceased or his family after his demise, or the decision of the Muslim civic leaders if the dead is unidentified or has no relative.”<sup>582</sup>

### **5.8.4 Saudi Arabia's Senior Ulama Council**

Saudi Arabia's Senior Ulama Council has already approved cornea transplantation as early as 1967. In 1982, Saudi Arabia's Senior Ulama Council approved the transplantation of entire or portions of organs from deceased donors into living persons, provided there was no substitute. This council also unanimously permits the transplantation of living organs.<sup>583</sup>

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<sup>580</sup> Dr Tantawi, fatwa issued on 5<sup>th</sup> February 1989.

<sup>581</sup> The Islamic Fiqh Academy is a subsidiary organ of the Organization of the Islamic Conference (OIC), founded in January 1981 at the 3rd Islamic Summit Conference in Makkah al-Mukarramah (Saudi Arabia). Its members and experts are chosen from among the best scholars and thinkers in every field of knowledge available in the Islamic world, including fiqh, science, medicine, and economics. The decision of the Islamic Fiqh Academy at its Fourth Meeting on 11 February 1988 in Jeddah. Please see "Majma' Al-Fiqh al-Islami: Qararat Wa Tausiyat" 1985-1988, page 58.

<sup>582</sup> Ibid.

<sup>583</sup> Senior Ulama Commission. Decision No. 99, dated 06-11-1402 H. In Directory of the Regulations of Organ Transplantation in the Kingdom of Saudi Arabia. (n.d.). Jeddah: Saudi Centre for Organ Transplantation. P. 46

### **5.8.5 Riyadh's Highest Council of Scholars**

“It is permissible to transfer whole or part of organs from a deceased to another person, if the need for i.e. transplantation is critical. Live organ donation is also allowed if the recipient is in urgent need of the organ”<sup>584</sup>

### **5.8.6 Organization of the Islamic Conference's OIC, Islamic Fiqh Academy**

The deceased's organs may be transplanted to patients whose survival is dependent on transplantation or whose essential body functions are dependent on transplantation. However; if the deceased is anonymous or does not have any other relatives, this is based on the approval of the deceased or his neighbour following his death, or the judgement of the Muslim members.<sup>585</sup>

### **5.8.7 Malaysia's National Fatwa Council**

When there is a high need and demand for an organ, and the recipient's life depends on it, there is ample evidence that the transplantation procedure will succeed and is recommended. In the case of cardiovascular transplantation, the death of donors must be strong-willed before the transplantation can take place. Reasonable steps must be taken to ensure that no killing or business for organs is involved.<sup>586</sup>

### **5.8.8 Fatwa of Kuwait**

In 1979, the Kuwaiti Fatwa Council agreed that organ transplantation from the deceased, with or without the deceased's permission, was permissible. This fatwa is based on

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<sup>584</sup> “*Decision of the scholars in the Highest Council of Scholars in Riyadh*”, Saudi Arabia, decision No. 99, 6 Zulqaedah 1402H.

<sup>585</sup> The decision of the Islamic Fiqh Academy in its Fourth meeting in Jeddah on 11 February 1988, page 58 of “*Majma' Al-Fiqh al-Islami: Qararat Wa Tausiyat*” 1985-1988.”

<sup>586</sup> “Buang A.H., 2011. *Fatwa Ajaran Sesat Dari Sudut Undang-Undang Dan Cabaran Pembantasannya Di Malaysia*. Journal of Fatwa Management and Research. Vol. 2. E.

the need to save a life.<sup>587</sup> Living donors are also permitted to use the transplantation rule. It is, however, prohibited if the organs being transplanted are organs that can cause death, such as the heart and lungs.

### **5.8.9 Majma' Al-Fiqh al-Islami Fatwa**

Majma al-Fiqh al-Islami issued a fatwa on 11 February 1988 in Jeddah, Saudi Arabia, allowing organs from the dead to be transplanted to the living if the life of the recipient of the organ is dependent on the organ to be received, provided that approval is obtained from the donors prior to death, or from the deceased's guardian after death, or from the head of the Muslim community.<sup>588</sup> The prohibition of organ trafficking and smuggling is also emphasised in this fatwa.<sup>589</sup>

### **5.8.10 Fatwa of Majma' Al-Fiqhi Al-Islami Al-Hind**

The Islamic Fiqh Academy of India (Majma'al-Fiqhi al-Islami al-Hind) was founded to assist Muslims in the Republic of India with Islamic law issues. During a conference in New Delhi in March 1989, a fatwa was issued that allowed the substitution of a patient's organ with that of another individual based on necessity. Organs can come from either living or deceased donors.<sup>590</sup>

### **5.8.11 Fatwas on Deceased Organ Donation: An Overview of Religious Perspectives**

Despite the various efforts of these fatwas and discussions, nearly all of them express similar concerns, which poses a challenge to the Muslim community because it casts doubt on an already sensitive issue. There are two major concerns shown or indicated by majority

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<sup>587</sup> Majma' al-Fiqhi al-Islami (Muslim World League) Organisation of Islamic Cooperation, *Majallat Majma' al-Fiqh al-Islami*. Title: *Majallat Majma' al-Fiqh al-Islami*, vol. 2 (Jeddah: al-Majma' al-Fiqh al-Islami, 1986).

<sup>588</sup> Majma' al-Fiqhi al-Islami (Muslim World League) Organisation of Islamic Cooperation, *Majallat Majma' al-Fiqh al-Islami*. Title: *Majallat Majma' al-Fiqh al-Islami*, vol. 2 (Jeddah: al-Majma' al-Fiqh al-Islami, 1986).

<sup>589</sup> Ibid, pg.105.

<sup>590</sup> Abul Fadl Mohsin Ebrahim, "Organ Transplantation: Contemporary Sunni Muslim Legal and Ethical Perspectives," *Bioethics* 9, no. 3 (July 1995): 291–302, <https://doi.org/10.1111/j.1467-8519.1995.tb00364.x>

of scholars on deceased organ transplantation. The first one is “benefits of such a surgical procedure outweigh the risks it poses”. The second concern is which strengthens the opposition of deceased organ transplantation says that “it jeopardises the sanctity and sacredness of the human body whether dead or alive”. Both have valid reasons for their scholarly positions, and both represent an Islamic perspective on organ transplantation. The first of the two major groups is gaining ground. Most fatwa councils from all over the Islamic world support the idea of deceased organ transplantation; however, because this fatwa is not yet exhaustive, it does not bind Muslims. It is a personal decision that each Muslim must make for himself. The Prophet himself stated;

“Even if the whole people have given you fatwa juridical decisions or rulings you ask for a fatwa to your consciousness (nafs) and your ‘‘heart” (qalb)’.<sup>591</sup>

This hadith certifies that man is accountable for his actions whatever scholars claim through their ijma or ijihad that the person Muslim is still accountable for his actions. This is extremely important concerning organ transplantations since the choice to bequeath one’s organs is a private and self-determined decision since it is believed in Islam that “God has created the human organs and harnessed them for man's benefit”<sup>592</sup>

As a result, he holds him accountable for his organs and will eventually call him to account. The issue of organ transplantation is not one that can be definitively answered with a single uniform voice representing all Muslims; rather, the individual Muslim must make that fateful journey in deciding his or her stance concerning organ transplantation, when it comes to the free will and accountability of one’s own actions, organ donation cannot be forced on a person; he must elect himself what happens to his body while being answerable to his creator. The following points are extremely important in these detailed fatwas and discussions.

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<sup>591</sup> Musand ahmad ibn Hanbal Vol. IV Hadith No.:228

<sup>592</sup> Khadiga Musa, “Legal Maxims as a Genre of Islamic Law,” *Islamic Law and Society* 21, no. 4 (September 22, 2014): 325–65, <https://doi.org/10.1163/15685195-00214p01>.

- (a) Ownership of the human body in Islam.
- (b) Human self-respect.
- (c) Self-sacrifice and help.
- (d) Help and harm
- (e) A comprehensive definition of death

It is clear that the issue of deceased organ transplantation is a complex and sensitive topic within the Muslim community. On one hand, there is the belief that organ transplantation is beneficial to others and can save lives, and on the other hand, there is the belief that it can compromise the sanctity and sacredness of the human body.

Fatwas, or religious edicts, issued by various Islamic scholars reflect these opposing views and add to the complexity of the issue. While many fatwas support organ transplantation, others oppose it, leading to confusion and uncertainty among Muslims who are trying to make informed decisions about donating their organs after death.<sup>593</sup> The personal responsibility of each Muslim, as reflected in the hadith cited in the analysis, highlights the importance of individual consideration and decision-making when it comes to organ transplantation. While fatwas can provide guidance, ultimately it is up to each individual to weigh the benefits and risks and make a decision based on their own values and beliefs<sup>594</sup>. The fact that the issue of deceased organ transplantation is still not exhaustively resolved by fatwas highlights the need for continued discussion and dialogue within the Muslim community. It also underscores the importance of education and awareness-raising efforts to help individuals make informed decisions about organ donation. In nutshell, the issue of deceased organ transplantation is complex and multifaceted, and the conflicting fatwas issued by Islamic scholars reflect this complexity. While fatwas can provide guidance, it is

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<sup>593</sup> Dar Al-Ifta Al-Misriyyah, *Al-Fatwa Al-Islamiyah*, Cairo: The Supreme Islamic Council, Ministry of Endowment, Fatwa of Shaykh Hassan Maamoon, Fatwa Number 1065, 1959 Cited from 1982 Edition 7:2552.

<sup>594</sup> Ibid.

ultimately up to each individual Muslim to make a decision based on their own beliefs and values.

While it is important to respect religious beliefs and values surrounding deceased organ donation, it is also worth considering the ethical principles of altruism and utilitarianism. Altruism, which emphasizes concern for the well-being of others, suggests that donating organs after death can be seen as a selfless act that has the potential to benefit others in need. Utilitarianism, which focuses on maximizing overall happiness and well-being, suggests that the benefits of deceased organ donation in terms of saving lives and improving health outcomes may outweigh concerns about the sanctity of the human body.

It is important to note that both altruism and utilitarianism are not necessarily in conflict with religious beliefs surrounding deceased organ donation. In fact, many religious traditions emphasize the importance of helping others and promoting the common good. By framing deceased organ donation in terms of these ethical principles, it is possible to see it as a way of fulfilling religious and moral obligations to help others in need.

Moreover, it is worth considering the potential benefits of deceased organ donation in terms of promoting interfaith dialogue and cooperation. By engaging in respectful and open discussions about the ethical dimensions of deceased organ donation, it is possible to find common ground and promote greater understanding and collaboration across religious and cultural boundaries.

Overall, while religious beliefs and values are an important factor to consider in the context of deceased organ donation, it is also important to consider broader ethical principles and the potential benefits of this practice for individuals and society as a whole. By approaching this issue with a spirit of respect, compassion, and openness, it may be possible to find ways to bridge cultural and religious divides and promote greater understanding and cooperation.

## 5.9 Islamic Medical Ethics

Islam is regarded as a complete way of life by its followers; illness and health are only one aspect of the believer's journey through life. The Qur'an cites,

"وَإِذَا مَرَضْتُ فَهُوَ يَشْفِينِ"

*"And when I am ill, it is God who cures me".<sup>595</sup>*

Muslim patients, understandably, pray to Allah for health, as Allah is unquestionably their only source of salvation. As a result, a doctor's role is more of a source. In the Islamic worldview the instructions on mundane tasks, as well as the rules and values by which Muslims are to govern themselves, are essentially derived from a heavenly source and materialised into sharia or constitution. As a result, it's difficult to distinguish the pillars of morals and ethics from the law, and they don't change with the passage of time or location; case-absolute. To fully comprehend the domain of Islamic medical ethics, we must first comprehend how law specialists in Islam strive to accurately translate the essential source of the sharia as per the heavenly will, a domain known as *usal al-fiqh*, or jurisprudence principles.<sup>596</sup>

## 5.10 Biomedical Ethics in Islam

In Islam, *adab* or *ikhlaq* is referred to the word "ethics" which means good etiquette, moral values and manners. In Islam, medical ethics are known as "Adab al-Tabib," which translates to "medical doctor's ethics."<sup>597</sup> According to Fazlur Rahman, philosophers can only improve the soul, whereas doctors or their fields of medicine can improve both the body and the soul. Furthermore, in his opinion, a medical doctor can be considered capable of imitating (to the best of his abilities) God's incredible acts of healing to treat the sick.<sup>598</sup> Ethics and

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<sup>595</sup> Al Qur'an, Surah Ash Shu'ara, 26:80.

<sup>596</sup> Al-Sulami, al 'Izz Ibn 'Abd Al-Salam. *Qawa'id Al-Ahkam FTMasalih Al-Anam*. Cairo: *Matba'at Al-Istiqaamah Bi Al-Qahirah*,1960.

<sup>597</sup> Fazlur Rahman, *Health and Medicine in the Islamic Tradition* (Chicago: Kazi Publications inc., 1998),347.

<sup>598</sup> *Ibid*, 91.

spiritual medicine are considered synonymous in Islam. The majority of people believe that ethics and spiritual acts cannot be completely separated. For instance, the scholar Mohammed Ibn Zakariya al-Razi was considered to be both the ethicist and the spiritual medical doctor (unrelated to Imam Fakhr al-Din al-Razi).<sup>599</sup>

Organ transplantation is ethically debatable and in that debate two important aspects of biomedical ethics must be considered. First and foremost is that human body is revered and valued in Islam. Islam respects the human body but does not prescribe any specific treatment for it.<sup>600</sup> In today's modern medical sciences, organ donation and surgical procedures are not regarded as harmful or disrespectful to the human body as all these procedures are carried out in the most courteous and advanced manner possible.<sup>601</sup> This provides a reason good enough to those scholars who consider organ donation as an act of goodness and virtue that is prospering human life.

Secondly, there are instances where Islam allows to ignore the sanctity of the human body, these instances are such that involves rescue of other person who is alive or can be saved from death if sanctity of deceased body is ignored. According to *Tuhfat al Fuqaha*, "if a pregnant woman dies and the child in her is still alive, she will be cut open to save the child, for the sake of saving the life which is awaiting to enter this mortal world, thus the sanctity of the human body will be overlooked."<sup>602</sup> Similarly, it is permissible to save someone who is drowning or is in the midst of a burning flame while putting oneself in danger. Almost all religious scholars agree that giving blood is permissible if there is a need

Keeping above given examples in, consideration it can be advocated that it is also permissible to donate one's organ to save the life of another human being, without causing

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<sup>599</sup> Ibid, 92.

<sup>600</sup> Al Nawawi, *Majmu' Sharh Al-Muhadhab*. 12 vols. Cairo: Al-Tiba 'ah al-Muriiriyah, 1925.

<sup>601</sup> Ibid.

<sup>602</sup> Samarqandi, *Badai'i al-Sana'i*, *Tuhfat al-Fuqaha*, 4/261.

harm to wellbeing of the donor.<sup>603</sup> Surgical procedures involved in organ transplantation ensure that one's body is not mutilated in an unnecessary way.<sup>604</sup> According to traditional medical ethics physicians are expected to provide services to the vulnerable at all costs and with the best expertise and skill. The transfer of funds and facilities from specialists to partnerships, associations and governments owned organizations / institutes has resulted in high healthcare costs resultantly rendering physicians to provide care at any cost. Doctors are no longer sole decisions maker about patient wellbeing. They do have control over their technical abilities and treatment, but not over the services or financial resources. This development has contributed to disparities in healthcare distribution. Poor people with meagre source of income are at disadvantage, as medical treatment provided to them is in contrast to the wealthy. This inequality creates imbalance in different segments of society, dealing with it is quite difficult. On the other hand Islam follows a different principle, it advocates equality and emphasises on more help and support from society and government to its lower segments. The culture of caring for and donating to the poor is now practically growing on a global scale, and it is no longer limited to physicians. All Muslim doctors and communities understand their obligation to treat the vulnerable in accordance with their long-held beliefs in public health and charitable work for the poor and needy.<sup>605</sup> The fear of God, as well as the rewards for righteousness that God accepts in the Hereafter, play a significant role in maintaining morality in Islam and acts as a motivator for good behaviour to have greater reward.<sup>606</sup> In the Islamic perspective, the theory of justice is very strong.<sup>607</sup>

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<sup>603</sup> Hamdy, Sherine. "Rethinking Islamic Legal Ethics in Egypt's Organ Transplant Debate." In *Muslim Medical Ethics*, Edited by Jonathan E. Brockopp and Thomas Eich, 78-93. Columbia, S.C.: The University of South Carolina Press, 2008.

<sup>604</sup> Dariusch Atighetchi, *Islamic Bioethics: Problems and Perspectives*, Dordrecht: Springer, 2007.

<sup>605</sup> A. A. Nanji, "Medical Ethics and the Islamic Tradition," *Journal of Medicine and Philosophy* 13, no. 3 (August 1, 1988): 257-75, <https://doi.org/10.1093/jmp/13.3.257>

<sup>606</sup> Halstead, J. Mark, Ed. "Islamic Values: A Distinctive Framework for Moral Education?" *Journal of Moral Education* 36, No. 3 (September 2007): 283-96.

<sup>607</sup> Ibid.

Bioethics in plural societies may differ in different countries of the world but in those countries who lead life on the Islamic principles, bioethics is likely to be indistinguishable from faith, which carries with it conformity. In most countries, opposing viewpoints on a single ethical issue are unavoidable.<sup>608</sup>

### 5.11 The Bioethics Foundation

Bioethics has sparked debates over its terminology and perceptions since its inception. Bioethics, according to those who believe it is a discourse that evolved from medical ethics to adapt advances in science and technology, however it is still a traditional discourse that is limited to medical themes only. According to this point of view<sup>609</sup> bioethics as a branch of medical ethics was primarily supposed to address the issues of abusive medical practises. As a result, defending human rights in medical situations frequently entails defending the rights of the sick.<sup>610</sup>

When it comes to its understanding and recognition, bioethics is a contentious topic. Most researchers believe that it is a branch of medical ethics, and that it is still a common topic that is linked to clinical subjects. It is more concerned with scenarios of harsh medical practises. As a result, safeguarding human rights in clinical settings frequently includes safeguarding the rights of the disabled who needs to be treated with more respect and consistency, such individuals must be provided better opportunities of treatments, according to bioethics.<sup>611</sup>

On the other hand, some people believe that Van Rensselaer Potter, a biologist, was the first to develop bioethics. He combined “knowledge of birth with ethics” to protect and

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<sup>608</sup> Sheikh, Aziz, ‘*Death and Dying--a Muslim Perspective.*’ *Journal of the Royal Society of Medicine* 91, No. 3 (March 1998): 138-40.

<sup>609</sup> Laurence B. McCullough, “*Laying Medicine Open: Understanding Major Turning Points in the History of Medical Ethics,*” *Kennedy Institute of Ethics Journal* 9, no. 1 (1999): 7–23, <https://doi.org/10.1353/ken.1999.0005>.

<sup>610</sup> Mukhtar Al-Mahdi, ‘*Nihayat Al-Hayah Al-Lnsaniyyah,*’ in *Al-Hayah Al-Lnsaniyyah: Bidayatuha Wa-Nihayatuha Fi Al-Mafhum Al-Lslami*, 2., 343.

<sup>611</sup> Abhinav Humar, Mark L Sturdevant, and Springerlink, “*Atlas of Organ Transplantation*”, (London: Springer London, 2015).

sustain humanity in the short term and the “knowledge of birth combined with good morals” to protect and preserve humanity in the near future. Potter's grasp of bioethics appears to be more than surprising. Bioethics is usually developed to incorporate moral values into any concept involving personality. He emphasises that bioethics must first contain ethics and ethical standards, which must then be consistent with other natural realities.<sup>612</sup>

Science and humanity, or more specifically, biological knowledge and human values, are the two most important aspects of bioethics. Potter's "equilibrium approach to the use of knowledge and other information in social welfare" was first described in 1942.<sup>613</sup> According to Potter, biological knowledge in social work aims to generate information from the human biological environment. Bioethics is concerned with preserving human values and bringing humanity's future into a state that can be comprehended. The majority of a man's life is based on biological knowledge and behaviours. To explain his perspective on bioethics, Potter defined it as a link between the present and the future, nature and culture, science and heritage, humanity and nature. It is a link between the present and the future because of its life philosophy.<sup>614</sup>

Bioethics is a survival science that aims to save humanity by improving medical care while also advocating for women's rights. Preventing overcrowding, protecting the environment and biodiversity, and positively changing society. The perception of bioethics should be understood on a global scale to protect all humanity. Bioethics bridges the gap between biology and all actions taken to protection human values, as well as dividing demographics and medical science. Furthermore, people and the places where they live are inextricably linked; thus instead to biological variety, they produce consistent outcomes. As a result, ecology should be considered in bioethics when it comes to these relationships, so that

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<sup>612</sup> Van Rensselaer Potter, “Bioethics, the Science of Survival,” *Perspectives in Biology and Medicine* 14, no. 1 (1970): 127–153, <https://doi.org/10.1353/pbm.1970.0015>.

<sup>613</sup> Ibid.

<sup>614</sup> Potter, Van Rensselaer. “Bioethics, the Science of Survival.” *Perspectives in Biology and Medicine*,45 (1970)

humans are equal to the natural environment. Potter recognises the fact that bioethics evolves on how it is interpreted and assessed, the outcomes has to be strengthening itself by preserving and developing more lives.

The common procedure in all fields of sciences is to observe, ask questions and then search for answers or solutions. Bioethics, on the other hand, differs from most other sciences in that it focuses on something else.<sup>615</sup> Potter does not believe that bioethics is limited to the medical field only. Bioethics ignores many important environmental, demographic, and social issues that have a direct impact on population utility. As many other factors influence patient survival, therefore only improving morals in a clinical setting will not have a lasting solution.<sup>616</sup>

Bioethics is divided into two categories: human relationships and human-community relationships.<sup>617</sup> As a result, bioethics plays an important role in revealing strategy choices. The pursuit of bioethics cannot be separated from the pursuit of human rights. As one might expect, it protects a number of basic freedoms, making it bioethics' most important goal. However, it is responsible for making decisions concerning the human rights. Potter's bioethics, in this sense, provides a broader perspective and subjects with more human rights protections than medical ethics. According to Potter's concept of bioethics<sup>618</sup> biological awareness preserves human values, and biological awareness and knowledge protect the future. In terms of human rights, Potter's theory is more significant and balanced than the other, because basic freedoms include the right to medical services as well as all of the qualities that each person retains throughout their lifetime. Every human being, irrespective of this that he belongs from poor or wealthy segment of society, he is pious or evil in nature, sick or well, has the right to be treated fairly.

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<sup>615</sup> Ibid, 70-75.

<sup>616</sup> Ibid 76.

<sup>617</sup> Ibid 72.

<sup>618</sup> Ibid, 76-77.

## 5.12 Bio Ethics and Human Dignity

The international principles of bioethics include religious practise as a core and essential feature. Religious practise must be taken into account when determining all-inclusive global human rights standards.<sup>619</sup> Human rights are based on the concept of human nobility, which is recognised as the critical balance of all members of the human family. This is the intrinsic value of each and every human being, as well as the value of humanity as a whole. As a result, it must be recognised and respected by everyone, regardless of their age, gender, health status, ethnic and social origin, political beliefs, or religious beliefs.<sup>620</sup> Maintaining human dignity necessitates the protection of fundamental rights. Human rights, according to some, are distinct from world views because Islamic views are centred on God, whereas world views are based on men.<sup>621</sup> In the international document, the UNESCO Universal Declaration on Bioethics and Human Rights, this interpretation is supported. Religious practise is an important part of the Declaration's human rights system, and it should be valued and included in the process.<sup>622</sup> Likewise, basic liberties are on a similar line with the world view in Islamic law.

## 5.13 Honour and Preservation of Human Dignity in Deceased Organ Donation

Human dignity means the integrity of the individual and there should be no disparity on basis of his or her identity, all human beings are equal. It must also be acknowledge that death of an individual may be accepted and recognized as personal concerns of the physician. Practical implementation of this require good contact between practitioners in health care and those in their care.

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<sup>619</sup> S. Awori, Henk A.M.J. Ten Have and Michele S. Jean (Eds), "The UNESCO Universal Declaration on Bioethics and Human Rights: Background, Principles and Application," *Human Rights Law Review* 10, no. 4 (November 26, 2010): 789–92, <https://doi.org/10.1093/hrlr/ngq031>.

<sup>620</sup> Christopher Kaczor, "The Edge of Life : Human Dignity and Contemporary Bioethics, Kaczor, 1969.

<sup>621</sup> Shannon Dunn, "Islamic Law and Human Rights, The Oxford Handbook of Islamic Law.

<sup>622</sup> Ibid.

The donation of an organs by a potential donors to the recipient, unknown or familiar must be done with trust and willingness of both. The obstacle which frequently obstruct organ donation and discourages donors and society is body integrity after death. This is not only shrinking the family of donors but also creating a crises of organs availability. Which is not only effecting the lives of recipients in need but also damaging basic essence of Islam which states to help those who are in pain and agony. This concept can be final obstacle to expand the family of donors and encourage donation.<sup>623</sup> The system underpins the thought of human dignity, which predominantly applies to the issue of organ donation as it needs equivalent consideration and assurance for each individual, including incapacitated or dead persons.<sup>624</sup>

The human body and its parts make up an entire individual, so they can't have a sticker price and even after death they can't be own by someone else. Human dignity is honoured, preserved by honouring the whims of the dead; if the deceased wishes to preserve the integrity of his body or to donate his organs to others, all other parties will respect the wishes.<sup>625</sup>

Family and social beliefs must take a back seat to self-belief and convictions and approach adopted must be based on Islamic consent: Islam orders to respect certain body parts. According to the Quran;

"قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ ۗ ذَٰلِكَ أَزْكَىٰ لَهُمْ ۗ إِنَّ آ  
لِلَّهِ خَيْرٌ بِمَا يَصْنَعُونَ"

*"O Prophet! Tell the believing men to lower their gaze and guard  
their Chasity. That is purer for them."*<sup>626</sup>

<sup>623</sup> Kamali, Mohammad Hashim, *The Dignity of Man: An Islamic Perspective*. 2nd Ed. Cambridge: Islamic Texts Society, 2002.

<sup>624</sup> Ibid.

<sup>625</sup> Kateb, George. *Human Dignity*. Cambridge, MA: The Belknap of Harvard University Press, 2011," n.d.

<sup>626</sup> Al Quran, An Nur, 24:30.

“أَقُلِّمُوا الْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ

وَأَيُّضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ مَّا ظَهَرَ مِنْهَا ۗ”<sup>627</sup>

*“And say to the believing women that they should lower their gaze and guard their modesty; that they should lower their gaze and guard their beauty and ornaments except what (must ordinarily) appears thereof.”<sup>627</sup>*

Keeping these verses in consideration when a patient is examined by a doctor, he will try not to look at their reproductive organs, regardless of gender.<sup>628</sup> The Shariah outlines the private parts of the body that should be covered in order to protect both men and women (especially women) from the influences of others. According to Islamic jurists, whenever a doctor intends to treat a patient he must have patient's consent, which might be documented or verbal. In various Islamic states (Egypt, Pakistan, Turkey, etc.) there do exist families where patients' interests are predominantly ignored by ménages whenever it conflicts with social norms of the society. These household may be a father, spouse, uncle or the specialist, and so on where ever the family's decision force is high, the "weak" members' needs and desires can be ignored.<sup>629</sup> In such Muslim families, it is perceived as inner progression, social relations or regard of doctors, who are viewed as a source of heavenly empathy.

Furthermore, when a patient is critically ill or without hope, the patient never makes an independent decision about a potential treatment, and it is the family who decides who to consider. Furthermore, all of the information that a patient provides to a physician for diagnosis and treatment is held in the highest regard. According to the Quran:

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<sup>627</sup> Al Quran, An Nur, 24:31

<sup>628</sup> Fazlur Rahman, *Health and Medicine in the Islamic Tradition*, 66-77; Emilie Savage-Smith, *Islamic Culture and the Medical Arts*, 2-28; Muslim Ibn Hajjaj, *Sahih Muslim*. 2nd Ed. Vol.2, 1729; Muhammad Ibn Yazid Abu 'Abd Allah Ibn Majah, *Sunan Ibn Majah*. 2nd Ed. Vol. 2, 1138.

<sup>629</sup> Fazlur Rahman, *Health and Medicine in the Islamic Tradition*, 66-77; Savage-Smith, *Islamic Culture and the Medical Arts*, 2-28.

" وَالَّذِينَ هُمْ لِأَمْتِنِهِمْ وَعَهْدِهِمْ رُءُوفُونَ "

*"Those who contracts and trusts they vigilant guard"*<sup>630</sup>

In Saudi Arabia, it is common practise among doctors not to accept the right to refuse care or surgical testing that is required for the safety of women's patients. In such cases, the doctors will contact the patient's guardian (usually the patient's husband or brother) and ask them to sign an informed consent form. In the past, the lady had never been asked for her opinion on a serious matter, such as the death of the mother and hatchling, which had resulted in a variety of serious consequences. As a result, under current law, a mentally stable adult woman has the right to accept or reject clinical consideration without the need for prior consent from her mother, parent, or uncle. The Saudi Arabian Ministry of Health has established an emergency clinic organisation regulation that states that if a patient is able and mentally stable, he or she should sign a written consent to sedation or medical procedure in the presence of two legitimately fitting observers who then sign the form in return. In the case of children, oblivious patients, or intellectually challenged patients, the document should be signed by that individual who is taking care of them as guardian, watchman or close family members in the presence of two witnesses. If the guardian cannot be identified, the governor or police may, in accordance with Shari'ah law, replace him or her. Saudi Arabian society does not appear to regard male mediation as a violation of women's rights, owing to the country's unique and distinctive family model. It is not explicitly stated in the law, but it is an implicit social norm. In reality, it appears to be a cause for concern when women agree on major issues.<sup>631</sup> In Islam, a person is made up of corpses and brains, so human poise refers to both the corpse and the soul; respect for and preservation of human dignity encompasses a person's physical and spiritual dimensions, whether they are alive or dead.

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<sup>630</sup> Al Quran, Al Muminun, 23:8.

<sup>631</sup> Nils Fischer, Dariusch Atighetchi, Islamic Bioethics: Problems and Perspectives," *Journal of International Biotechnology Law* 5, no. 4 (January 2008), pg. 45-49, <https://doi.org/10.1515/jibl.2008.29>.

## 5.14 In an Islamic Context Saving a Human Life

Life is a gift from Allah, and he is the primary source of life, and we are held responsible for the life that has been thrust upon us.

”رَبِّي الَّذِي يُحْيِي وَيُمِيتُ قَالَ أَنَا أُحْيِي وَأُمِيتُ.”<sup>632</sup>

*“My Lord is the one who gives life and causes death”<sup>632</sup> Human and nature both play a part in the life-giving and death-causing cycle, but it is only God who gives life in the end.<sup>633</sup> Human life is a sacred gift from God, and it is thus the responsibility of human beings to safeguard its sanctity.<sup>634</sup>*

Healing humans is a sacred profession in which guardians must put forth a valiant effort in all stages of human life and under all circumstances, while also acknowledging that the true healer is God. The most important requirement in Islamic teaching is the protection of human life. The human body has sanctity in Islam, according to the Prophet's statement: "The soul has its freedom, and the body has its privileges."<sup>635</sup>

In Islamic perspective, life is a gift from God to humanity. It is his responsibility and moral duty to protect his life and the lives of all fellow human beings on a physical and moral level. No human being has the right to abuse the lives of others, either physically or morally. Apart from the execution of prisoners and the mutilation of the assortments of the dead, deprivation of one's or others' lives is forbidden in Islam. "If anyone slews a person, except for murder or the spreading of mischief in the country, it would be as if he had slain all the

<sup>632</sup>The Qur'an 2:258.

<sup>633</sup>The Qur'an 2:260

<sup>634</sup>The Qur'an 6:151, 4:29, 4:93, 5:32.

<sup>635</sup> 1245-2 أو 1181 عثمان بن عبد الرحمن، ابن الصلاح الشهرزوري، uthmān Ibn 'abd Al-Rahmān Ibn Al-Ṣalāh Al-Shahrazūrī and Sayyid Kasrawī Ḥasan، الأنوار اللمعة في الجمع بين مفردات الصحاح السبعة (البخاري ومسلم وأبي داود / Al-Anwār Al-Lum'ah Fī Al-Jam' Bayna Mufradāt Al-Ṣiḥḥah Al-Sab'ah (Al-Bukhārī Wa-Muslim Wa-Abī Dāwūd Wa-Al-Tirmidhī Wa-Al-Nasā'ī Wa-Ibn Mājah Wa-Al-Dārimī) ( دار Bayrūt: Dār Al-Kutub Al-'ilmīyah, 2006).

people: and if anyone saves a life, it would be as if he had saved the lives of all the people."<sup>636</sup>

Keeping all these values and teachings in consideration it can be easily stated that, Islam emphasises the nobility for all human being without paying any attention to their skin colour, nationality, sex or status. Every human being is created to serve God, for same reason we have equal rights to freedom, as well as the ability to earn God's reward and punishment.<sup>637</sup>

Everyone who so ever he may be if is ill must have access to medical care. All of them should be given all available assistance. They all have the right to protect human dignity. The statement is similar to the Islamic bioethics assumption that all treatment hindrances and obstacles should be removed under any circumstances. Every human being has the right to a higher quality of life and deserves to be treated with respect and valued fully. Human dignity is a right that we all have. Humans are responsible for each other's defence and enhancement. Human beings are responsible for protecting and improving one another. This is how equality, justice, and equity will be achieved.

In Islam, an individual is a mix of corpse and psyche, subsequently, human dignity reaches out to the corpse and soul; regard for and assurance of human nobility include physical and profound parts of an individual, whether the individual is in any condition.<sup>638</sup>

## **5.15 Conclusion**

Within the context of deceased organ donation, Islamic ethical principles of altruism and utilitarianism can be applied to support the practice. Altruism, which emphasizes the importance of selflessness and concern for the well-being of others, aligns well with the Islamic concept of sadaqah (charity), which is highly valued in the faith. By donating organs

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<sup>636</sup> Qur'an 5:32.

<sup>637</sup> Qur'an 33:35.

<sup>638</sup> "Islamic Organization for Medical Sciences. 'the Sanctity of Life Doctrine and Ethical Consistency'. Islamic Organization for Medical Sciences, 2nd Ed. (1995).

after death, Muslims can express their generosity and concern for others, and potentially save lives in the process. Similarly, utilitarianism, which emphasizes the importance of maximizing overall happiness and well-being, can be seen as compatible with Islamic principles. The maqasid al sharia, or Islamic law purposes, include the preservation of life, and thus deceased organ donation can be seen as a means of fulfilling this objective. By donating organs after death, Muslims have the potential to improve the health outcomes and quality of life of others, which can be seen as a positive ethical outcome. Furthermore, Islamic jurisprudence principles of *usul al-fiqh* and *qawaid fihiyya* can be applied to support the practice of deceased organ donation. *Usul al-fiqh* provides a framework for deriving legal rulings from the Quran and Sunnah (Prophetic traditions), while *qawaid fihiyya* provide general legal principles that can be applied to new situations. By applying these principles to the issue of deceased organ donation, scholars and jurists can arrive at a reasoned and well-supported legal ruling that takes into account the ethical considerations involved. It is important to note that there are varying viewpoints on deceased organ donation within the Muslim community, and that individual choices must be respected. Nonetheless, by applying ethical principles of altruism and utilitarianism, as well as Islamic jurisprudence principles, it is possible to see deceased organ donation as a practice that is consistent with Islamic values and objectives. As such, it is important to engage in open and respectful discussions about the issue, and to promote greater understanding and collaboration across religious and cultural boundaries.

## **CHAPTER 6: CRITICAL ANALYSIS OF THE LEGISLATION ON DECEASED ORGAN DONATION IN PAKISTAN**

### **6.1 An Overview**

Legislation on deceased organ donation has the potential to significantly impact donation rates, but it also raises important questions about how to effectively balance individual rights and the needs of the larger community to receive the gift of life through transplantation.

This chapter elucidate what impact would proposed legislation on deceased organ donation have on increasing donation rates, and how can such legislation effectively balance individual rights and the needs of the larger community to receive the gift of life through transplantation? Over the last decade, developed countries have passed laws allowing for the donation of organs from the deceased. The primary goal of such legislation is to protect the rights of those directly involved, such as donors, and to assist those who are in need of organs by effectively promoting donation. By effectively providing legal certainty, the legislation aims to ensure consistent and equitable distribution of organs among the masses in need of an organ, as well as to prevent organ trafficking and financial gains. The legislation for deceased organ donation is also based on some very important legal principles, such as providing legal certainty to the interests of both the deceased and the recipient, their next of kin, medical personnel. Those countries where masses has sense of these principles and right to bodily integrity along with the prohibition and punishment on violation of these rights of biomedicine, are free from its ills, those countries do have included it to some extent in their national laws. However no society is picture perfect, citizens can try to deduce these principles but it is the responsibility of state to ensure that their laws are followed.

In the greater interest of Pakistan's people, the government of Pakistan must take into account the existing laws in foreign countries and work on required legislation according to

our culture and religion so that rights of Organ donors and recipients are addressed. This will not only protect our physicians but also safe guard interest of general public, as it is one of the prime responsibility of state. Therefore state must ensure compliance with international legal instruments by enacting legislation on partial donations of corpses. This chapter aims to propose the model for deceased organ donation.

## **6.2 Deceased Organ Donation Legislation for the Prevention of Organ Trafficking**

Organ trafficking is on the rise all over the world. Various tragic stories about illegal business networks, doctors and hospitals have been reported in the media. With passage of time it is growing as a profitable industry which is promoting these unrestricted facilities exploit the poor and provide substandard medical care to the wealthy, resulting in unacceptable and devastating outcomes for public health. Its unchecked growth has hampered the efforts to promote selfless organ donation. Simultaneously, this squabble continues to exacerbate the all-encompassing rise in the number of sick people suffering from illnesses linked to a scarcity of organs. Measures to increase contribution coverage and meet their own needs, well-supported by country will act as a strong deterrent to the expansion of organ tourism in poor countries. The development of a regulated, organisational, and ethical procurement system is also critical for developing countries. It is necessary to raise awareness among physicians as well as the general public. The international substitute and nephrology societies of the World Health Organization (WHO) play a critical role in advancing initiatives in these critical areas.

It is necessary to develop specific codes and roles for professionals currently donating organs unregulated and performing transplantations. Physicians and transplantation specialists must, in the end, ensure that organs are obtained in accordance with the highest ethical standards.

This necessitates the State playing a constructive role in directing legislators and other related officials, such as religious leaders and medical expert teams, to propose legislation and enforce the applicable legislation with a stronger commitment and contribution to public health, as required by its corporate social responsibility.

### **6.3 Legislation in the Area**

The act will be known as the "Deceased organ donation act," and it will work in tandem with the "Transplantation and Tissue Act 2010." Its goal would be to promote, educate, encourage, motivate and raise awareness in Pakistan about deceased organ donation. It will host and promote a discussion forum on ethical, social and legal issues. It may not be restricted to national level its scope can be enhanced and help in required legislation can be sorted from regional and Muslim countries.

This act will serve as a link between existing transplantation organisations and all doctors, government departments, health workers, and scientists who will support, promote, and devise programs for organ donation.

The act also lays out a scenario for organ symposia, congresses, and organ reports and announcements in order to achieve the goals.

The organization association will work on a non-political, non-commercial basis and provide financial assistance to the poor and needy under this act.

An "organ procurement committee" will be established. The committee will be in charge of making recommendations to officials on all matters pertaining to organ procurement, as well as sharing information with its center's across the country. It will also look into ways to improve organ sharing collaboration and the possibility of establishing a "deceased organ bank" for the distribution of organs in designated centers under the act. The committee will also make an effort to communicate with organ coordination organizations or organ procurement organizations.

Since the true essence of deceased donors is altruistic, the promoters/office bearers of the organization or association, as well as other members, will not be compensated.

It will be managed to ensure that funds, donations, grants, and other movable assets are received, accepted, and managed from legal sources and that they are used to advance the organization's or association's goals and objectives.

The organization's operations must be limited solely to the organization's goals and purposes, with a strict focus on promoting it as a Community service. Therefore office bearer or core committee which will decide transplantation of organ must comprise of such people who are well reputed and well established in different fields of life i.e. Fine arts, literature, renowned sportsman/woman or journalist etc. Any member/office bearer of the organization, violating the basic motive of community service of this organization will result in the respective officeholders or members being held personally liable.

#### **6.4 Organizational Structure**

There will be four different types of members, as follows:

- (a) The organization's officers shall be elected as President, Vice President, General Secretary, and Treasurer, all of whom must be active members in good standing.
- (b) The President is solely accountable and responsible for all activities and shall ensure full compliance with the organization's constitution as outlined in the rule and act.
- (c) The Chairman of the Board will select the President for a two-year term, representing the country at global level.
- (d) He is primarily responsible for the organisation and fulfils all responsibilities other than those of the President, such as regular Council and General Assembly meetings, plans for submission to the Board of Directors or the

General Assembly, voting, and Council declaration. The President will have overall authority and responsibility.

- (e) Following the expiration of the President's term at office the Vice President takes office immediately.
- (f) At the next General Meeting of the society new president is selected for next two years to fill the vacancy of the President's office.
- (g) In the absence of the President, the Vice President will preside over the office.
- (h) The treasurer is elected for a two-year term. He is responsible for all of the organization's assets. He is in charge of collecting membership fees and reporting to the Board on payment defaults. He shall report all expenditures and transactions of the organisation and, if the organization's financial status is requested, shall provide the President and the Council with an account to be submitted to the Council and the General Assembly, and shall submit accepted or audited financial statements to any group of persons appointed by the Council.
- (i) Regular members will be Pakistanis who are permanent residents and are actively and efficiently involved in transplantation.
- (j) Members of the Supporting Group.
- (k) Honorary members.
- (l) For a two-year term, the Secretary-General will be chosen. He will also keep the minutes of all council meetings and society memberships. He is responsible for ensuring that all notices are properly delivered in accordance with these bylaws and for maintaining the organization's membership record, which includes an identification number, date of admission to membership, and payment of the required dues. He'll be in charge of all contracts,

responsibilities, and other legal documents and records, as well as all dates and decisions made in the same format. He is in charge of organising the General Assembly's and Council's meetings.

- (m) A Science and Research Committee will advise the Council on all matters concerning education, scientific symposia and programmes, journals, clinical trials, and collaborative research projects.
- (n) An ethics and bylaws committee will be charged with making recommendations to the Council on all ethical, social, and legal transplantation-related issues, as well as analysing and recommending the Society's bylaws.
- (o) The committee will also investigate complaints and conduct investigations, as well as make recommendations on individual members of society's ethical behaviour. There shall be a religious committee for addresses all the religious concerns and administration of the procurement of organs in the true spirit of Islam.
- (p) Additional meetings on special topics can be held within the Society's structure with the approval of the Councils.
- (q) The organization shall be federally funded and supervised.
- (r) Alternative structures must be available to the structural organisation.
- (s) It will also be open to various universities for research and development, including medical, ethical, and Islamic universities.

## **6.5 Organ Tourism Controlling Mechanism in Pakistan**

The following control mechanisms can be adapted for organ tourism in Pakistan;

### **6.5.1 Monitoring Authority**

The proposed legislation calls for the establishment of a monitoring authority. The monitoring authority will be in charge of:-

- (a) Monitoring and enforcing established standards for approved health care facilities and hospitals.
- (b) Examination of charges of violation of any provision of the Ordinance.
- (c) Conducting a survey of research institutes and hospitals to determine transplantation consistency.
- (d) Establishing a national records office, as well as general and local networks, to assess the implementation and excellence of transplantation midpoints.
- (e) Assessing, supporting, and promoting global xenotransplantation collaboration.
- (f) The supervisory authority appoints an administrator and other officials who are required to carry out their business.
- (g) Regulatory authorities require the distribution of a list of medical institutes and sickbays that have been documented for operational surgery for human tissue and organ transplantation.
- (h) The supervisory authority operates at the district level, and the district's relevant DCOs and EDOs should be included in the authority.
- (i) Under the act, the authorities must publish a report to raise awareness about the difficulties in obtaining the deceased organ for needy people.

### **6.5.2 Evaluation**

Medical and transplantation experts, technicians, nephrologists, specialists, and doctors will serve on evaluation committees. They are in charge of the following:-

- (a) Medical and hospital transplantation procedures are under strict control to ensure that no organ or tissue is removed from an unrelated living donor without the Review Committee's prior approval.
- (b) Priority determination using the human organ extraction protocol for the deceased.
- (c) Determining whether or not a human organ is suitable for transplantation into another body.
- (d) Licensing requirements must be strictly followed, and a suitable mechanism must be put in place. Medical personnel who require anatomical examination, post-mortem examination, organ removal, storage of anatomical examination, and use of the body for scientific and medical purposes must have the authorities' permission.
- (e) Organ swapping is permitted with the approval of the Evaluation Committee if both donors and recipients agree to the transplant.
- (f) A Media Cell should be established to provide public knowledge of organ transplantation and to inform citizens about organ donation, with every citizen encouraged to report organ trafficking in their city to the Media Cell.

### **6.5.3 Provisions**

Human resources are the most basic requirements for the recognition of transplantation centres in Pakistan. Infrastructure, equipment, and facilities were required for management, diagnostics, laboratories, and blood banks.

The regulatory system, qualifications, and technical experience of hospitals providing transplantation services will be the primary focus of this authorization. In addition, the WHO delegate plays an important role in connecting WHO technical assistance and expertise.

## **6.6 Registration of Deceased Organ Donors: Proposed Procedure**

A person can donate organs in one of two ways: by pledging for organ donation while still alive, or by the deceased family's approval.

With two eyewitnesses, one of whom is a close relative of the kin, a person can pledge to donate organs during his or her lifetime. Although not legally binding, the donor's card provides insight into the family's goal. However, the final decision will be made by the deceased's next of kin after written approval.

If a person dies without being enrolled, family members can donate their organs. They must sign an approval form for that specific purpose, which is readily available, and organs can be obtained in a matter of hours. This must be taken into account, as the donors' families must be properly cared for during that time. The deceased body will be returned with proper protocol and dignity without disfigurement. It is possible to view the body as usual and proceed with the funeral arrangements without delay.

## **6.7 Deceased Organ Donation Legislation's Objectives**

- (a) Controlling and outlawing organ trafficking.
- (b) To put an end to the illegal sale of organs to foreigners.
- (c) To raise the standard of transplantation
- (d) To establish guidelines for the removal, surgery, and transplantation of human organs.

Transplants of organs are able to combine life and death for the benefit of society. According to current evidence, the replacement organ can provide society with a critical health guarantee. However, this possibility is hampered by the paradoxical scarcity of donated organs. The exceptional medical progress provided to individuals by medical institutes necessitates the development of new methods and state policies that can be implemented without restriction for the benefit of society. This advancement in medical

practise, of course, has the potential to generate new health programmes that differ from those previously recognised. The vital need to convert death into life, symbolised by organ transplantation, necessitates the end of one's life. As a result, the state and the people must recognise and accept the metaphor "change death into life." The advantages of organ replacement for security systems must be communicated to society. The significant fiscal differences in renal transplants over the same period in dialysis patients are evidence of this reality. To achieve this goal, individuals must understand the fundamental solution to a deceased person's inalienable development with a final organ disorder, as well as the fact that our body is a unique and irreplaceable health source after death.

## **6.8 Research Findings**

The research findings of this thesis involved a comprehensive review of the literature on deceased organ donation legislation, examining international best practices and earlier research on deceased organ donation. The literature used to identify major obstacles and problems surrounding organ donation in Pakistan, including the historical developments and difficulties associated with deceased organ donation legislation in the country. Islamic rulings and other ethical considerations studied to contextualize the legislation. Through data analysis techniques such as thematic analysis, the study identified key themes and patterns in attitudes and perceptions towards deceased organ donation, highlighting areas where improvements in legislation and practice are needed. A detailed case study of the impact of deceased organ donation legislation in Pakistan provides a deeper understanding of the challenges and opportunities for improving organ donation. Based on the research findings, recommendations would be developed to improve the legal and regulatory framework for deceased organ donation, increase public awareness and education, improve access to information, and ensure ethical and responsible organ donation practices.

## 6.9 Conclusion

The issue of the shortage of donated organs is a critical problem that requires urgent attention. Despite the scientific and technical advancements in transplantation procedures, the waiting list for organs and the number of deaths among those waiting for transplants continue to grow. One of the main reasons for this paradox is a lack of social awareness and engagement in organ donation. To address this issue, it is necessary to modify the messaging around organ donation and transplantation. This can be achieved through a comprehensive education campaign aimed at all levels of society. However, it is particularly important to focus on early childhood education, starting with primary schools. By educating children about the importance of organ donation and transplantation, we can instil in them a sense of responsibility and empathy towards others. This can help to create a cultural shift towards a society that values and prioritizes organ donation, both during life and after death. Moreover, educating children can have a ripple effect on their families and communities, increasing awareness and encouraging more people to become organ donors. This can ultimately lead to a significant increase in the number of organs available for transplantation, saving countless lives in the process. In conclusion, the shortage of donated organs is a complex problem that requires a multifaceted solution. While scientific and technical advancements have been crucial in improving transplantation procedures, a cultural shift towards organ donation is also necessary. By modifying the messaging around organ donation and prioritizing early childhood education, we can create a more engaged and empathetic society that values the gift of life through organ donation.

## CONCLUSION & RECOMMENDATIONS

This thesis aims to highlight the position of Islam on deceased organ donation, case study of Pakistan current situation is illuminated and it proposes a model for legislators. In Pakistan, there is an urgent need for organ donation legislation. The goal is to assess key types of regulations and how well they align with global and moral strategies. It outlines the ever-changing challenges and predictable opportunities for developing a morally focused national capability for this aggressive provision. Organ trafficking can only be effectively combated if the concept of deceased organ donation is widely accepted. The Organ Trafficking Case contributes to our understanding of civil society's role in combating transnational crime. This dissertation suggests that activists and advocates of perspectives on public and official illegal activities will shift, by disseminating information, mobilising societies, and enlisting the media, activists can persuade policymakers and the government to prohibit a market that they previously accepted. Pakistan is widely regarded as a country where selling and buying organs continues to be carried out in violation of WHO guidelines. Therefore, the government needs to play a proactive role in promoting deceased organ donation and enforcing relevant legislation, as well as pay greater attention to the public health sector and the media industry, both of whom must accept this cause as their social responsibilities. The most effective way to prevent organ exploitation and sale is to promote cadaveric donations that follow internationally agreed-upon guidelines and are acceptable to the families of deceased donors. To achieve a sustainable organ donation source, this dissertation aims to gain and maintain public trust and confidence. All parties involved in the model should be altruistic, but work should be differentiated based on each party's capacity. "A gesture as intended as his willingness," is the current meaning of the donation. When a donor dies, the health team contributes their knowledge and skills, and the hospital

administration makes an effort. The health service is capable of assisting. With all transplant procedures, the final load would be shared with the organisation or the government.

▪ **Legislative Reforms**

A new section inserted in PPC to stop the illegal transplantation activities at other places not recognized under the transplantation act. Section 374(a) would describe the punishment for commercial dealing of human organs, tissues, and cells, this will be punishable by a term of imprisonment of up to fourteen (14) years and a fine of up to ten million rupees. It was also recommended to make such offence non-bail able, non-compoundable, and cognizable.

▪ **Administrative Reforms**

The federal and provincial government should take the following measures;

- To strengthen the human transplant authorities and monitoring committees.
- Proactively promote deceased organs
- Establish the protocols as per international standards.

▪ **Effective Enforcement of Law**

- To make committees, who will have the authorities to take necessary steps against those who violate the transplantation law, such committees will be in touch with secretary of monitoring authority.
- The police surgeon will provides necessary guideline for removing the organ of brain death donors.
- There should be monitoring committees who will evaluate the credibility and audit their decisions.
- If there is any complaint, it should be solve by the secretary of the monitoring committees within 24 hours.

▪ **Public Out Reach**

- There should be institutionalization of deceased donor program, and those who want to join should be publicly recognize through awards and certificate

▪ **Action Desired from Media Regulators**

- The PEMRA, APNS, CPNE, PFOJ and PTV should spread awareness among the citizen and encourage them.
- They should educate the general public on the donation of organ and that it is followed in Islam.

▪ **Proposals of Reaching Out to the People**

In order to spread the message of organ transplantation, the working group suggests the following ways;

- Encourage youth
- Campaign in school, college and universities
- Public festivals
- Animated movies
- Introduce related topics in courses
- Study circles

▪ **Proposals of Professional and Deceased Organ Donation**

In this, the group agreed on the following points;

- Certified brain death is death
- A central body of HOTA should be formed which will have branches across the state of Pakistan
- If there is brain death, it should be reported to DG health.

#### ▪ **Proposal of Role of Media in Public Education**

The role of media is very important. The working group agree on the following points:-

- Use of national television as of greater importance
- Deliver emotional messages through media i.e dramas, cartoon, short films and documentaries
- Make use of social media
- Utilize religious programs
- Use popular celebrities to influence the people.

The above proposal were made in order to make the transplantation process safe and stop the illegal activities. It also suggested the awareness among the people will play a key role in order to achieve our goals.

### **RECOMMENDATIONS**

The dissertation's recommendations show that the most effective way to prevent illegal organ trade and promote deceased organ donation is to prohibit it. The recommendations listed below are based on the findings of the research.

- (a) The government should honour the record offices at the state and regional levels in order to create a deceased donor's record for potential recipients and donors. Methods should be prescribed for the safe and efficient processing of those organs.
- (b) All transplant activities that are carried out illegally outside of recognised hospitals will be prosecuted under the law. The schedule of the Code of Criminal Procedure must be amended accordingly, which means the crime

cannot be compounded, bail cannot be set, and the federal investigative agency's schedule of action must be made recognisable.

- (c) .All print and electronic media regulators and journalists must educate the public on the importance of deceased organ donation, in order to raise public awareness of the fact that organ donation is tracked in all Muslim countries, as well as to expose the business and illegal transplantation of organs, and to encourage the print media to broadcast civic amenity messages endorsing departed organ donation.
- (d) All organ donor registries must use an easy national Urdu language to ensure reliability through archives in etymological use to gain endorsement for organ donation. The linguistic familiarity will clarify organ donation options and provide people with better health information.
- (e) Public awareness campaigns should include billboards, pamphlets, social media advertisements, and mass cellular network messages.
- (f) The proposed legislation will establish a clear legal control on organ donation for the purpose of conducting research that is monitored by transplantation, such as in organ donor intervention research, in order to promote new interventions.
- (g) All active donor registries must work together to create a single, secure national donor archive that is easily accessible to organ procurement organisations.
- (h) An educational curriculum should be developed by experts in sociology, psychology, and theology to adequately prepare for the potential consequences of deceased organ donation barriers.

## Final Remarks

The following are some possible solutions to the problem of deceased organ donation.

- Education
- Constrictive legislation
- Expanding the number of donors
- Financial rewards

## Education

The information provided on deceased organ donation is insufficient. Operational education on the need to change society's current aversion to donating dead organs is an opportunity to advance this critical medical and social need. Instruction and statistics will increase the value of organ donation by protecting the population from exploitation. Educational awareness has been a source of concern at all levels of society for a decades, which will be addressed by organ donation and transplantation organization.<sup>639</sup> However, since organ donation and location haven't changed globally, the current consequences may be deemed insufficient. Multiple polls reveal a serious lack of understanding about transplantation and deceased organ donation.

Youth education should take precedence over schoolchildren over post-life body use when looking for new ways to change ancient prejudices and prevent barriers.

People, particularly youth, are prejudice-free and can learn new ideas quickly, often much more easily than adults. Early childhood, according to psychological research, is the best time for prevention programmes. The children can also share new ideas with their families, which schoolchildren learn through clear and unbiased information.<sup>640</sup> Opportunities

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<sup>639</sup> Bardell T, Hunter DJ, Kent WD, Jain MK. "Medical Students Have the Knowledge Needed To Maximize Organ Donation Rates," *Canadian Journal Of Surgery*. 2003; 46 (6):453-457.

<sup>640</sup> Cantarovich F, Cantarovich M, Falco E, et al. "Education on Organ Donation and Transplantation in Elementary and High Schools: Formulation of a New Proposal Transplantation," 2010; 89(9):1167-1168  
DOI: 10.1097/TP.0b013e3181d2fe98.

for learning must be realised, and people who are willing to learn must be found. A truly human society is one where grandparents, parents, and children are all students.

Nobody could comprehend the depths of compassion, gentleness, and abundance hidden within a child's soul. Every genuine educational effort should be directed toward revealing that treasure.<sup>641</sup>

Organ and tissue donation can also involve children. Because of its sensitivity, this topic necessitates cautious decision-making. Kids have the opportunity to think carefully about the subject and enjoy participating in domestic negotiations in the area.<sup>642</sup> Shoenberg believes that teaching young people about organ transplantation is not difficult. He reasoned that assisting youth in appreciating the transplantation trick increases the likelihood of them fully comprehending its significance. In response to this teaching, young people will most likely answer this question with their family or peers, multiplying the educational impact. Long-term education, particularly for young people, is uncommon. As a result, this prominent non-medical educator proposed that "the deputy community should provide strong stimuli that encourage teachers to take on this task in multiple locations."<sup>643</sup> In any case, the insufficient education results, which have not changed significantly in ten years, point to the need to evaluate the existing practise of instructing the social order, which has come to a halt as a result of their current attitude toward deceased organ donation. Clarification of the previously mentioned fundamental concepts, as well as updated information on organ donation and transplant, are added to the understanding of the fears and harms of ignorance.

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<sup>641</sup> Lloyd Yero J., "*The Meaning Of Education Teacher's Mind Resources*", 2001-2002 [Online]. Available From: <https://fr.scribd.com/document/20635703/Teacher-s-Mind-ResourcesHttp-Www-TeachersMind-Com>." Accessed January 8, 2021.

<sup>642</sup> Siebelink MJ, Verhagen AAE, Roodbol PF, Et Al. "*Education On Organ Donation And Transplantation In Primary School; Teachers' Support And the First Results Of a Teaching Module*," PLOS One. 2017;12(5):E0178128. DOI: 10.1371/Journal.Pone.0178128." Accessed January 8, 2021.

<sup>643</sup> Shoenberg RS, "*The Reports of the Surgeon General. The Surgeon General's Workshop on Increasing Organ Donation: Background Papers: 'Planting the Seed: Organ Transplantation Education for Children, Youth and Young Adults'*"; 1991. Pp. 181-198. [https:// Profiles.Nlm.Nih.Gov/Ps/Access/Nbcbzk.Pdf](https://profiles.nlm.nih.gov/ps/access/nbcbzk.pdf)

Recent experiments in Argentina and Canada, which were influenced by the previously mentioned theoretical ideas, have yielded promising results.<sup>644</sup>

### **Constrictive Legislation**

Organ transplant legislation has passed, attempting to establish a fair method of organ procurement, and new legislation on deceased organ donation will improve distribution and allow people to serve as organ donors. Proper legislation on deceased organ donation will help to prevent illegal organ trafficking and save the lives of many people who are dying from organ failure. The nation as a whole will benefit from proper implementation and execution. As a strong warning, strict measures against individuals and groups in developed countries who exploit the poor in developing countries.

### **Expanding the Donors Pool**

Any attempt to increase the number of national donors will reduce, if not eliminate, organ trafficking. Regional collaboration should be established to make it easier to implement measures to expand the pool of legal donors, such as improved approaches to deceased organ donation.

This is critical in developing and implementing a controlled and moral organ procurement programme, as well as raising awareness among doctors and the general public.<sup>645</sup> Global aid will be present as an excellent example of joint achievement and collaboration in the establishment of these registries and programmes.

### **Financial Rewards**

The idea that financial incentives could help explain the current scarcity of organ donors was debated and argued by experts in the fields of transplantation, ethics, regulation,

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<sup>644</sup> S. M. Giles, "Organ Donation Programs Needed in Rural Areas," *Canadian Medical Association Journal* 185, no. 14 (September 30, 2013): 1252–1252, <https://doi.org/10.1503/cmaj.113-2137>.

<sup>645</sup> F.A.M Shaheen and M.Z Souqiyyeh, "Factors Influencing Organ Donation and Transplantation in the Middle East," *Transplantation Proceedings* 32, no. 3 (May 2000): 645–46, [https://doi.org/10.1016/s0041-1345\(00\)00929-5](https://doi.org/10.1016/s0041-1345(00)00929-5).

and finance.<sup>646</sup> Any financial benefit or interest gained by those who contribute specifically to the organ reception process, be it to donors, donors, or donors' families, is considered a financial benefit.<sup>647</sup>

Organ donation for the sake of altruism is insufficient to address the scarcity of organs. Finally, those who support financial incentives for organ donation believe that such incentives are moral because they are based on the interests of patients and the preservation of life, not just on theoretical ideas and unanswered questions.

### **Tool for Increasing Organ Donation from the Deceased**

The strategies listed below can be used to increase deceased organ donation.

- (a) Organ donation databases that are computerised
- (b) Prompt referral
- (c) After death has been confirmed, a donation can be made.
- (d) Notification on a regular basis and the requirement to make a decision.
- (e) First-hand approval

In a nutshell, legislation allowing for the donation of a deceased person's organs will support the following initiatives.

Promoting and establishing organ donor registries, as well as encouraging members and the general public to discuss death with their doctors and loved ones and to register as organ donors.

- (a) Maintaining a focus on prompt referral, daily notification, and mandated choice in order to identify potential organ donors and maximise donation opportunities for self-designated donors or next-of-kin survivors.

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<sup>646</sup> Levy M. (2018). "State Incentives to Promote Organ Donation: Honouring the Principles of Reciprocity and Solidarity Inherent in the Gift Relationship." *Journal of Law and the Biosciences*, 5(2), 398–435. <https://doi.org/10.1093/jlb/lxy009>

<sup>647</sup> Ibid.

- (b) To advance the science of deceased organ donation, the government should invest in and promote fundamental science and clinical research programs.
- (c) Public acclaim for organ donors and their families.
- (d) Extension of the system to encourage first-person approval and actionable donor registries.
- (e) Expansion of professional education services in order to make the most of increased donor resources.
- (f) Continuing to boost and increase the number of transplant organs available through collaboration with other agency donors.

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