

Received: 05 February 2024, Accepted: 05 April 2024

DOI: <https://doi.org/10.33282/rr.vx9i2.164>

Recommendations of the Council of Islamic Ideology of Pakistan on the Will of Organs(A Jurisprudential Analysis from the Perspective of Islamic Law)

Kifayat ur Rahman,

Ph.D Scholar, Department of Islamic Studies, Faculty of Arts and Humanities, Abdul Wali Khan University, Mardan

Dr. Saeed-ur-Rahman,

Assistant Professor, Department of Islamic Studies, Faculty of Arts and Humanities, Abdul Wali Khan University, Mardan

Dr. Lutfullah,

Associate Professor, Department of Law & Shariah, University of Swat,

Abstract:

One of the amazing feats of science is that human organs are successfully transplanted into another human body, recently, a new type of will called "Testament of Organ Donation "has been introduced. In the present era, many Muslims bequeath their organs out of compassion and with the intention of obtaining a reward. The Islamic Ideological Council of Pakistan has conducted important research on this topic, discussing and researching it from different aspects in about ten meetings. As a result, the Transplantation of Human Organs and Tissues Act 2018 was passed. However, according to this research, there are a few things to be considered in this legislation and its recommendations: Is the human body a trust or is it completely owned? What is the status: of a human being in using and receiving benefits? If available, what are the options for using and obtaining benefits? Will there be any difference in this property with respect to life and death? The status of donation during life is different from the status of endowment, and especially wills, which are different. Is this action really Shariah compliant, legal, ethical, and socially correct and appropriate, and is it rewarding or not? Apparently, these issues are not clear in the recommendations and legislation of the Islamic Ideological Council, so they are also worthy of research.

KEYWORDS: Islamic law, Sharia'h , Council of Islamic Ideology of Pakistan , Organs,

Will , Analysis.

(Introduction & Significance): In the 21st century, there has been such a surprising development in all scientific sciences in general and in medical science in particular, which perhaps the people of the past era could not have imagined. One of the amazing feats of science is that one human organ is successfully transplanted into another human body, but in the modern era, on the one hand, the field of implanting artificial organs is very wide, on the other hand, the transplantation of real human organs is also on the rise. There has been a lot of research on the Shariah and legal status of which, and not only that, but the door of the will to donate human organs before death has also been opened, and thus a new type of will, "Testament of Organs Donation" has been introduced. People are based on compassion. It is bequeathed that after my death such and such organ of mine should be transplanted to a patient. The practice of organ donation has become common in the western society and it is also spreading in our society, some famous personalities bequeathed their organs and their wills were broadcasted through the media, due to which the trend started to increase in this direction among the people. For example: Former Chief Justice of Pakistan Saqib Nisar has bequeathed his organs while addressing a ceremony at the National Institute of Urology and Transplant (SIUT) in Karachi. Similarly, Abdul Sattar Edhi also bequeathed his two eyes before his death: In his will, Abdul Sattar Edhi gifted his eyes to a blind person. Inspired by his good deed, about 2 thousand people in the country bequeathed to donate their organs.ⁱⁱ

The virtue of Islamic Sharia is that it has the solution to every problem. It is the duty of the jurists of the nation and the scholars of the nation to solve the problems of their times in the light of the Qur'an and Sunnah and determine the course of action. Nowadays, many Muslims bequeath their organs out of compassion and with the intention of obtaining reward. Is this act of

theirs really correct and appropriate in Shari'ah, legal, moral and social terms and is it rewarding or not?

In this case, there are two facts that people need to understand. One is that the issue of the will to donate organs has not been explicitly discussed in the Qur'an and Sunnah because this process has become possible only after the development in the field of medical science in the modern era.

An important research on this topic is that of the Islamic Ideology

Council of Pakistan, which has been discussed and researched from different aspects in about ten different meetings.iii

And in detail, the legal status in the form of recommendations from the legislative committees of the Parliament and the Senate (the first time the legislation was passed in the Punjab Assembly under the name of "Transplantation of Human Organs and Tissues Act 2010", then from the Standing Committee of the National Assembly and the Senate, "Transplantation of Human Organs and Tissues" The Amendment Act 2018 was passed. The Transplantation of Human Organs and Tissues Act 2010 and the Transplantation of Human Organs and Tissues Amendment Act 2018 have been implemented.iv

However, according the research, there are some important points in this legislation and recommendations:

First :If a person has total ownership, what powers will he have to use and get benefits? And what will be the status of this body in terms of punishment and punishment in the world of Barzakh, Maada and Qiyamat after death?

Similarly, in relation to life and death, will there be any difference in this property? Because the status of giving and donating in life is different and the status of endowment and especially will is different.

The human body, the body, the organs and the organs (human body) is the property of Allah, the human being has received it as a trust, the human body is the creation of Allah and belongs to Him. Man does not have the right to own his body. He can use it while staying within the fixed limits. All the stages of birth, worldly life and the stages of death and rebirth have been revealed by Allah the Almighty.

Therefore, in Surah Al-Mu'minun, mentioning the good creation of the stages of birth and then death and rebirth, Allah Almighty has taken all

actions to Himself and warned that He is not unaware of the creation.v

Second: human beings do not have the authority to dispose of the human body:

Human organs are not his property: We do not have the right to dispose of them in any negative way, that is why suicide is forbidden. Cutting off one's hands and feet or harming one's body in any other way is illegal on the same principle. The power to dispose of a person's life or death or

body is only with the true creator and owner; therefore, he said in the Holy Quran: "وَلَا تُلْقُوا بِأَيْدِيكُمْ

إِلَى الدَّهْلِكَةِ"

Translation: And do not put yourself to death by your own hands. vi

Similarly, Allah says: "وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا"

Translation: And do not kill yourselves, surely Allah is Most Merciful to you.vii

In the light of blessed hadiths: Hazrat Abu Huraira narrates: The Messenger of Allah, peace and blessings be upon him, said: Whoever kills himself with his weapon (with any weapon or by any means)

(of suicide) killed by 'that weapon will be in his hand' he will remain in hellfire forever and that weapon will keep stabbing in his belly'viii

Hazrat Tufail bin Amr Dawsī and a person from his people also migrated. This person did not like the water of Madinah, so he fell ill and began to cry. He swam and severed his fingers at the joints and died of profuse bleeding. Tufail ibn Amr saw in a dream that he was in a good condition.

Tufail asked him: How did your Lord deal with you? He replied: Allah

has spared me by the blessing of migrating with the Prophet. He replied: I was told: We will never fix what you yourself have damaged.ix

When an act is forbidden during life, it is also forbidden after death. Therefore, on this principle, it is not permissible to donate organs before death, legally and morally.

Third: Donating a part of the human body to another:

The human body or any part cannot be gifted or gifted to another person, because according to Shari'ah, it is necessary for the gift and gift to be something that is owned by the Donar.

And he is free to dispose of it, while the human body is neither a property nor a property of a human being, so that he has the right to dispose of it. Therefore, the Fatawi is in Al-Lamgiri:

"وَأَمَّا مَا يَرْجِعُ إِلَى الْوَاهِبِ، فَهُوَ أَنْ يَكُونَ الْوَاهِبُ مِنْ أَهْلِ الْهَبَةِ، وَكَوْنُهُ مِنْ أَهْلِهَا أَنْ يَكُونَ حُرًّا عَاقِلًا بَالِغًا مَالِكًا لِلْمَوْهُوبِ--ومنها: أَنْ يَكُونَ مَالًا مُتَقَوِّمًا فَلَا تَجُوزُ هِبَةُ مَا لَيْسَ بِمَالٍ أَصْلًا كَالْحُرِّ وَالْمَيْتَةِ وَالْدَّمِ."

Translation: And one of the conditions of a Donar is that he has the ability, and among the eligibility is that he is an adult of independent intellect and possessing something talented.....And one of these conditions is that the gifted thing must be rich, so it is not permissible to take possession of that thing in a way that does not have wealth, e.g. x

Free man and dead and blood.

In the same way, the same condition applies to the will, that the testator can bequeath the thing, which he owns, and the heir has full authority to dispose of it, so the fatwa is universal: "وَشَرَايُطُهَا:"
كَوْنُ الْمُوصِي أَهْلًا لِلتَّمْلِيكِ"

Translation: And one of the conditions of a will is that the testator is capable of making another the owner (meaning: to bequeath A person can bequeath the thing, which he owns, so that through the will he

makes another person after him the full owner of it).xi

Therefore, a person has the right of profit in his body, but he does not have the right of ownership. How can a person donate or donate the ownership of these properties or profits to another person or institution, over which a person does not have the right of ownership? Man is only their custodian and protector, and Amin does not have the authority to make such dispositions, which have not been authorized by the trustee, as stated in Fatawi Alamgiri:

"وَأَمَّا حُكْمُهَا فَوُجُوبُ الْحِفْظِ عَلَى الْمُودِعِ وَصَيْرُورَةُ الْمَالِ أَمَانَةً فِي يَدِهِ وَوُجُوبُ آدَائِهِ عِنْدَ طَلْبِ مَالِكِهِ"

Translation: And the rule of trust is that the depositor (with whom the trust is placed) is required to protect the (property) and the property will be a trust in his hands and the owner of the property will be paid for it on demand.xii

Fourth: the human body is respectable:

One of the reasons for transplanting organs is that it is tantamount to desecration of the deceased.

It is known that in our religion, idolatry of the dead means desecration of the body, as India did after the martyrdom of Sayyidna Hamza. His body was desecrated, an act that is forbidden. Even in organ transplantation, the body of the deceased is used. His body is cut and the organs are removed, without this process, organs cannot be transplanted to others.

Therefore, organ transplantation is not possible without performing the ritual, which is a forbidden act. Therefore, it is illegal. Similarly, some people's organs have been cut off, even after death there will be nothing left to bury. For this purpose (dissecting the human body after death by following the will) the human body is torn apart, which is masla, and masla is not permissible in the Shari'ah, so the Messenger of Allah, may God bless him and grant him peace, said:

"كان نبي الله ﷺ يحثنا على الصدقة، وينهانا عن المثلة"

Translation: The Messenger of Allah (peace and blessings of Allah be upon him) used to encourage us to give charity and forbid us to commit adultery (of the human body).xiii

Man is honorable and dignified, it is a violation of human dignity to separate any of his organs from his body and give them to another human being. This is the reason why the jurists have prescribed treatment and treatment and on the occasion of severe compulsion. Also prohibits the use of human organs. So the fatwa is universal:

"مضطر لم يجد ميتة وخاف الهلاك فقال له رجل اقطع يدي وكلها أو قال اقطع مني قطعة وكلها لا يسعه أن يفعل ذلك، ولا يصح أمره به كما لا يسع للمضطر أن يقطع قطعة من نفسه فيأكل، كذا في فتاوى قاضي خان."

Translation: When a needy person does not find anything to eat and is in danger of dying, if someone says to him, "Cut off my hand and eat it," or says, "Cut off a piece of my body and eat it," it is not permissible for the needy person, nor is it right for the person who says that, just as it

is not permissible for the needy person to cut off a piece of his own body. Similarly, the ruling is also in Fatawi Qazi Khan. xiv

That is, the sanctity of benefiting from all the organs of a man is due to his honor and respect, so that the person whom Allah Almighty has made noble and respectable, people do not dare to use his organs and jewels.

The Shari'ah of Islam has prohibited the use of not only the useful organs of a living person, but also the use of useless organs and parts that have been cut off, and the cutting or mutilation of any organ of a dead person has also been called illegal, and in this matter, someone's permission and Even with consent, the use of its parts is not allowed, and in this the ruling is the same for both Muslims and disbelievers; Because this is the right of humanity, which is equal to all, the respect of human beings has been given the position by the Sharia of Islam that at any time and in any situation, no one should be greedy to get the organs and parts of the human being and thus it is Makhdoom. The universe and its parts are beyond common use objects that can be cut and sorted

It is ground and used in food and medicine and other interests, the Imams of Arbaa and the jurists of the entire Ummah agree on this.

Fifth: the teachings of the Qur'an and Sunnah regarding the change in the creation of the human body:

The creation and body on which Allah created man, healthy and free from all physical defects and defects, and that is nature, so do not change the creation and body created by Allah and do not cut off your hands and feet in the creation of Allah. Do not change or alter, therefore, those who will to donate some of their organs, such as kidneys, etc., this act of

theirs is forbidden and haram according to this verse:

"فَطَرَتِ اللَّهُ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا لَا تَبْدِيلَ لِخَلْقِ اللَّهِ ذَلِكَ الدِّينُ الْقَيِّمُ"

Translation: Allah has created man on the right nature, so do not change anything in the creation of Allah, this is the right religion.xv

Similarly, in another place, Allah says that this action is like making friends with Satan, so He

says: "وَأَضَلَّهُمُ لَأْمَنِّيهِمْ وَأَمْرَتُهُمْ فَبِئْسَ الْكُفْرَآءَ أَدَانَ الْأَنْعَامَ وَلَا مَرْتَهُمْ فَلْيَغْيِرَنَّ خَلْقَ اللَّهِ وَمَنْ يَتَّخِذِ الشَّيْطَانَ وَلِيًّا مِنْ دُونِ اللَّهِ فَقَدْ خَسِرَ خُسْرًا نَاقِصًا"

Translation: Satan swore to mislead people in the Court of Allah Almighty and said: And I swear that I will certainly lead them astray and I will certainly put (false) desires in their hearts and I will certainly command them. If they do, they will certainly tear off the ears of the cattle, and I will certainly command them, so they will certainly change the forms that Allah has made. He suffered a clear loss.xvi

Sixth: Teachings of the Qur'an and Sunnah regarding the reckoning of the Hereafter related to the human body:

As far as the reckoning and impeachment of a person on the Day of Judgment is concerned, the Qur'anic texts and the Sunnah of the Mutahira are very clear about it. The Holy Qur'an at various places asks the polytheists of Makkah and the disbelievers about the Day of Judgment, whether we will be resurrected when our bones decay, then the Qur'an declares in a very clear and blunt way that as you were born before Will you be born again in the same way? In this way, it is clearly stated in Surah Bani Israel that the ear, eye and heart will surely be asked. Similarly, it is clear in Surah Yasin that We will seal their tongues on the Day of Judgment and their hands will

speak and their feet will bear witness to what they have done. I will bear witness to what I have been doing on the Day of Resurrection, so what will happen on the Day of Resurrection regarding punishment and reward?

If an organ is cut off due to accidents in the human body, or it becomes damaged due to a disease, the Shariah has allowed to fulfill the need with other items, such as artificial organs should be made of chemicals or plastic or gold and silver metal. This is also supported by this incident/tradition: "أُصِيبَ أَنْفِي يَوْمَ الْكَلَابِ فِي الْجَاهِلِيَّةِ، فَاتَّخَذْتُ أَنْفًا مِنْ وَرَقٍ، فَأَنْتَنَ عَلَيَّ" «فَأَمَرَ نَبِيْرُ سُوْلَالِ الْهَيْصَلِ الْهَيْصَلِيُّ بِسَلْمَانَ أَنْ يَتَّخِذَ أَنْفًا مِنْ ذَهَبٍ»

Translation: Hazrat Abd-ur-Rahman says that during the Jahiliyyah period, my nose was cut off in the battle of Kalab. So the Messenger of Allah (peace and blessings of Allah be upon him) ordered me to make a gold nose.xvii

. Consequences and Adverse Effects:

If the will of human organs is declared legitimate, it will become a great danger and a source of destruction for the entire humanity. Looking at the widespread corruption in the present era, it is not far-fetched that people will use the opinion of the legitimacy of the will of organs and turn it into a regular business and buy and sell these organs. Make it your livelihood.

In this way, the open sale and purchase of human organs will start, which is undoubtedly against human dignity and illegal.

Poverty people will start selling their organs to support themselves and their children and to meet their needs.

Desecration of the dead and cruel behavior towards them will start, especially the orphaned dead will leave the world without many of their organs, and the cruel behavior that will be adopted with these corpses is not even possible in a humane society. It is a horrible sight to see rotting corpses lying on the roof.

God willing, if this matter continues to increase, this series will not be limited to those who die, but the market for the killing of many innocent people for this purpose will heat up and the kidnapping for this purpose may begin. The destruction of human society is announced.

والله اعلم بالصواب.

End Notes

<https://urdu.geo.tv/latest/181482>

تسنیم نیوز ایجنسی، 01 ستمبر 2016ءⁱⁱ

اسلامی نظریاتی کونسل کی سفارشات، سالانہ رپورٹ: 84-1983، 98-1999، 01-2000 تا 4-2003ⁱⁱⁱ

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المؤمنون: 12 تا 17^v

البقرہ: 195^{vi}

النساء: 29^{vii}

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سنن أبي داود، أبو داود سليمان بن الأشعث بن إسحاق بن بشير بن شداد بن عمرو الأزدي السجستاني^{xiii}

(المتوفى: 275هـ)

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