Research Article

A Jurisprudential Study on Blood and Organ Donation after Execution

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ABSTRACT

Organ transplantation and blood donation are the only way of life for many patients. They are considered as philanthropic methods and important indices for social obligation and participation. The issue of blood and organ donation of a person sentenced to death has close relation with the principles of Islamic jurisprudence. It is a lawful act for a Muslim to transplant by using his organs or the organs of animals and alive corpse of non-Muslim (provided that his life will not be in danger or he is satisfied) in order to treat himself or to keep his life. But it is not a lawful act to use corpse of a Muslim except in emergencies so that it can save the life of another Muslim. According to religious and legal regulations, amputation of an alive human in order to transplant the amputated organ to his body or another persons’ body is a lawful act provided that the donor of organ is satisfied or it is impossible to prepare an organ from other sources or transplantation is done wisely without any possibility of general breakdown or death. Execution of death penalty through organ donation is a new but influential issue to keep human life and health. Legitimacy of using this method requires exploring among jurisprudential decisions and thoughts. Famous Shi`as jurists believe that the method of execution of death penalty is not relevant and it should be done so that the least amount of suffering imposed on the body of malefactor. On the contrary, some other jurists believe that equivalence and resemblance in method of executing the judgment is depended on the committed crimes. These jurists believe that corporal integrity of the murderer will be fully authorized in the hands of blood avengers after commission of crime and they are fully authorized in execution of death penalty with regards to characteristics of committed crime. By accepting the viewpoint of these famous jurists, the necessity of equivalence and resemblance in circumstances of punishment and committed crimes will be canceled and we can do the execution of death penalty by using methods which have the least amount of suffering imposed on the body of malefactor. That’s why famous jurists insist on execution of death penalty by using sharp sword. On the other hand, they have accepted new methods which are in conformity with the proposed measure. Therefore, it seems that we can use the methods of organ donation in execution of death penalty.

INTRODUCTION

Nowadays, necessary organs for transplantation and donation can be accessed through three common ways: medical manufactures, body of animals and body of humans. According to jurists of all religions, it is legal to use medical manufactures (such as those used in skin reconstructive surgeries), or metal and pseudo-metal parts (which are used in broken organs of body instead of bone), or organs of an alive animal or organs of a died animal which is refined (such as eye transplantation of human by using the eye of an animal); therefore, these have no religious prohibition. Using the organs of a human for transplantation and donation has two forms: the organ belongs to person or it belongs to other person. In the first state, person should be satisfied and advantages of organ transplantation should be more than its disadvantages. In other words, jurists believe that amputation or transplantation of an organ is legal when its advantages are more than its disadvantages. Whenever an organ of a person is amputated due to an accident or a crime, it is legal to transplant that organ to his body. But whenever it is amputated due to execution of a judgment or execution of death penalty, there is dispute about
it. This issue dates back to the early days of Islam. It is mentioned in Islamic traditions and jurisprudential sources. Some jurists believe that this kind of transplantation and donation is illegal and it is contrary to the philosophy of Islamic punishment and execution. On the contrary, some other jurists believe that there is no reason for denying transplantation and donation because there will be extinction of religious obligation and duty whenever execution of death penalty is performed. Another opinion distinguishes between right of people and right of God. This opinion says that transplantation and donation are considered legal in the first state and they are legal in the second state provided that some conditions and circumstances are observed.

In the second state, an organ is removed from the body of a person in order to transplant or to donate to the body of someone else. It has two forms: removing the organ from the body of an alive person or a dead person. In the first form, all jurists believe that the donor of organ should be satisfied while he has legal maturity and common sense which are considered as general conditions of duty for this satisfaction. Therefore, removal of an organ from the body of an immature child or an insane person to transplant or donate is illegal even with the permission of his guardian because guardianship of guardian on immature child or insane person is not developed.

Organ transplantation is the only way of life for most patients. Many people with brain death are buried without any usage of their organs while many patients are waiting for receiving their organs to transplant. Unfortunately, non-transplantation of their organs will lead to the death of patients. The number of organ transplantation in Iran is less than countries in Europe and America. Therefore, every year, thousands of persons die in Iran. Since healthy blood and blood products are considered as permanent necessity, blood donation is also a philanthropic act as one of the important indices for social participation, obligation and development. When we talk about healthy blood, we should note that blood injection will not hurt the patient, at the same time, health and safety of blood donor will not endangered. Blood and organ donation has close relation with medical science and jurisprudence and law. In this regard, it is also applicable for blood and organ donation of persons sentenced to death.

In this case, there are different disputes among jurists and lawyers. But we should ensure that donation should be done by a person sentenced to death with his full independence and will. From the viewpoint of medical science, removal and transplantation of the executed person’s organ is possible for the alive person and from the viewpoint of jurisprudence, since the executed person will lose his ability and control on himself by his death, Islamic principles and ordinances of organ donation should be considered, provided that death is due to the execution of death penalty not organ donation. Alive person can make will about his property. There is dispute among jurists whether blood and organs are considered as properties or not. Generally, they could be considered as properties and each person can make his will about his organs to transplant and donate after his death.

**Organ donation after execution**

Traditionally, jurists have had dispute about transplantation of an organ which is amputated because of retaliation. If someone amputates another person’s ear and then the ear of the criminal is amputated too because of retaliation and the one of them transplants his amputated ear again, will the other person have the right to transplant his ear for the second time or not? It is mentioned in the book ”Moqnaeh” that: Whenever someone amputates the soft part of the other person’s ear and then they amputate the ear of the criminal is amputated too because of retaliation and the one of them transplants his amputated ear again, will the other person have the right to transplant his ear for the second time or not? The judge should grant the victim a respite to treat himself. If he was treated, the criminal shouldn’t be sentenced to amputation but he has to pay the indemnity for defect. But, if he wasn’t treated, the criminal should be sentenced to amputation and retaliation.¹

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¹ Najafi, Sheikh Muhammad Hassan, Jawaher Al-Kalam fi Sharaye Al-Eslam, Vol.5, P.284; Dar Al-
It is evident from the above sentence that if the victim transplants his amputated ear after amputation of criminal, the criminal has the right to amputate his ear again. This is applicable for all organs of body. It is mentioned in the book "Kafi" that: "the criminal should not be amputated unless there is no hope for treatment of wound, amputated organ, broken organ or dislocated organ". Therefore, wherever amputation sentence is issued whether both of them (victim and criminal) are treated or not, none of them are indicated to each other. But whenever one of them is treated, the other one should be amputated. This is when amputation is done with the permission of the first person, but if the amputation is not done with his permission, the amputated person should refer to a person who has permitted the amputation not to the victim.  

It is also mentioned in the book "Khalaf" that: "if someone amputates another person’s ear, the ear of the criminal will be also amputated. If the criminal transplants his ear, the victim has right to claim to amputate the ear of the criminal for the second time". Shafei says: "the victim cannot himself amputate the transplanted ear of the criminal. The judge should make the criminal to amputate his transplanted ear because it carries impurity and his amputated ear is in fact carrion. Therefore, it is impure and prayer shouldn’t be done with this impure ear. Shiite consensus and narrations are considered as our evidences. This is for the case in which the criminal transplants his ear, the victim has right to claim to amputate the ear of the criminal for the second time".

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\[\text{KetabEslamieh Publication, 4th impression, Tehran, 1995, pp. 294-298.}\]


2. Guiding Principle No 5, Adopted by the 44th World Health Assembly in May 1991.

According to recent report of Pennsylvania Health Department, it is lawful and legal to pay pittance of money in order to perform the burial ceremonies of the deceased. It is considered as an honor by community for organ donation.\(^1\)

According to some Fatwas\(^2\), it seems that receiving money for donation of organ is lawful and legal. As Emam Khomeini says: “if the removal of organ from the body of a deceased is lawful, it is not unlikely that selling an organ of an alive person by himself is lawful; so, human can sell his organs to transplant that organ in cases in which amputation and removal of that organ is lawful.\(^3\)

What we insist on is that the money received by the family of the deceased for removal of his organ (as he didn’t make a will) should be spent for charity affairs and the heirs have no right to spend that money.

Ayatollah Sistani said: "if we remove an organ of the deceased, we should pay its blood money and this amount of money should be spent for charity affairs or it should be used to pay the debts of the deceased.\(^4\)

Generally, we should try to not trade the organs of body in order to observe the ethical issues (although we should consider the compensation). That’s why Iranian Transplantation Higher Council issued a circular. This circular specifies that "donor and receiver of organ should have the same nationality".\(^5\) This circular is issued in order to prevent the markets of organ trade (for foreigners).

**Conclusion**

Removal of an organ from the body of infidels is permitted even the dead organs. No permission and will are required except tributary infidels who are loyal to undertaken contract. Therefore, it is permitted to remove an organ from the body of an infidel and to donate or to transplant it to the body of a Muslim unless he has secondary danger.

Legally, there are three conditions to donate the deceased organ to a patient: first, body should be healthy with no fatal disease and his organs should have necessary efficiency for the body of the organ receiver. Second, blood avengers of both the donor and receiver should have mutual full consent. Third, there should be no legal prohibition for removal and surgery of an organ and this should be done in accordance with regulations of Ministry of Health.

Patients need to receive and transplant organ on one hand, and existence of the persons sentenced to death on the other hand will lead to this question whether we can donate and transplant the organs of a person sentenced to death to a patient? This transplantation not only has no prohibition but also is a philanthropic and praiseworthy act. According to available regulations and Shi`as ordinances, nobody has the right to insult and desecrate the corpse of excused person whether this execution is due to retaliation or another crime; the body of the executed person should be treated respectfully; his corpse should be washed, baptized and shrouded. It should be prayed and buried in the Muslim ceremony. On the other hand, all Iranian families have civil rights, citizenship rights and legal privileges even families of the executed persons. They all have the right to donate the body organs of their deceased to everybody they want, even they can receive money or any privileges for donation of organs.

**Resources**

2. Guiding Principle No 5, Adopted by the 44th World Health Assembly in May 1991.
3. HorreAmeli, Sheikh Muhammad Ibn Al-Hassan, Wasayel Al-Shiah, Vol. 9, Dar Al-

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11. Shafeie, Al-am, Al-Jozr Al-Sades, 1st Impression, Maktab Al-Kolliat Al-Azharieh Publication.