

In the name of

Allah,

the Beneficent,

the Merciful

Al-Furqān

the bi-weekly electronic newsletter from the office of
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O Allah,

Bless

Muhammad

& his progeny

Organ Donation & Transplantation

Introduction

One of the new problems faced by the Shi'a *mujtahideen* (the jurists) is the issue of organ donation and transplantation. The human body, in life as well as in death, is governed by Divine laws in Islam. There are certain limitations on what we can and can't do with our bodies. The primary ruling of Islam about a Muslim's corpse is that it should be disposed of in a dignified way through a special procedure of washing, shrouding and burial.

Relying on guiding principles extracted from the Qur'an and the sunnah of the Prophet and his Ahlul Bayt, the jurists formulate the rules governing the newly occurring circumstances. What you see below is a series of questions and answers that I had written and published in July 1993. It is being presented here with additions reflecting the latest views of the contemporary Shi'a jurists.

Question 1: Can a person donate some of his organs to a patient who is in need of transplantation?

(A) During your life-time:

The late Ayatullāh al-Khu'i had different verdicts on "major organs" and "minor organs". He had allowed donation of minor organs but disallowed donation of major organs.

A criterion of defining "minor organ" is its ability to regenerate by itself. So donating blood, skin grafting and bone-marrow transplants would be considered as donation of minor organs and would therefore be permissible. But the kidney would be classified as a major organ and, therefore would not be permissible for donation. This is also the view of Ayatullāh Jawād Tabrizi.

Ayatullāh Sistāni, however, does not differentiate between the minor and major organs. As long as the donor would not be seriously handicapped himself or herself, there is no problem in donating one's organ, minor or major. Therefore, donating a kidney also would be permissible provided the donor has another healthy kidney. Ayatullāhs Nāsir Makārim and Khamanie would concur with this view.

(B) After your death:

According to the late Ayatullāh al-Khu'i, donating some of the organs (whether minor or major) after the death is permissible provided you have expressed your intention clearly in your will. Ayatullāh Nāsir Makārim also holds the same opinion.

Ayatullāh Khamanie allows this provided the body does not look like a mutilated body — so donating internal organs would be permissible but cutting off the external organs would amount to mutilation of the corpse which is not permissible.

However, Ayatullāhs Sistāni and Jawād Tabrizi do not recognize the validity of such a will at all; and, therefore, donating an organ after death is not permissible in their views.

Question 2: Is it necessary for the recipient of my organ to be a Muslim?

The recipient of your organ does not necessarily have to be a Muslim; you can donate your organs, wherever permissible, even to a non-Muslim.

Question 3: Can I as a Muslim accept the transplantation of a non-Muslim's organ to my body? If yes, what will happen to the issue of najâsat?

There is no problem in transplanting a non-Muslim's organ to your body. As for the issue of najâsat (ritual impurity): if it is an internal organ (heart or kidney), then there is no issue of najâsat at all.

If the transplanted organ is external, then for the first few days after the transplantation, that particular area of your body will obviously remain najis because of the surgery done on you and you will have to do ritual ablution in the *tayammum* or *jabira* form. ("Jabira" means the wuzu or ghusl done over a bandage. For details, see my *Ritual & Spiritual Purity*.) But after the area has healed, there should be no problem at all because the former organ of the kâfir has become, after transplantation, your organ and, as such, it will be considered *tâhir* (*pâk*, ritually pure). This is based on the rule of *intiqaâl*.

The same would apply if an animal's organ (e.g., a baboon's heart or a pig's organ) was transplanted to your body.

Question 4: If a minor child dies, does the parent have the right to donate an organ of the child for transplantation to another child/adult who needs it?

According to the views of the Ayatullahs Khu'i and Sistani, no parent has a right to donate his or her child's organ or body to anyone. However, Ayatullahs Nasir Makarim and Khamanei recognize the consent of the heir as sufficient for extracting an organ from the deceased.

Question 5: Keeping in mind the belief in resurrection and life after death, what will happen to my organ which has been transplanted to another person, probably a non-Muslim? Will I be responsible if my organ was used for a crime or a sin?

First of all, after transplantation onto someone else's body, your former organ will no longer be considered legally yours so there is no need to worry about being held accountable for crimes or sins committed through it!

Secondly, the God who created us from nothing will absolutely have no problem in putting us together on the day of resurrection. Read the following verses from surah Yâ Sîn:

And he (i.e., man) gives us an example and forgets his own creation; he says, "Who will give life to the bones when they are rotten?"

Say: "The same God will give life to them Who brought them into existence the first time, and He is Aware of all creations...Is not He who created the heavens and the earth capable of creating the like of them? Sure! And He is the Creator, the Knower.

"His command, when He intends anything, is only to say to it, 'Be,' and it comes to existence. Therefore, glory be to Him in whose hand is the kingdom of all things, and to Him you shall be brought back." (36: 78-83)

Let us worry about our own deeds and let Allah worry about how He is going to resurrect us!

Final remarks: Medical science is gradually moving towards therapeutic cloning which will help scientists in using the body's master stem cells to replace damaged or diseased body parts. Hopefully, with the perfection of therapeutic cloning, the need for organ donation will be reduced drastically. (Insha Allah, I shall soon publish my 2002 article on *Human Cloning in Islam*.)

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Questions on the previous issue of the al-Furqan Electronic Newsletter

The previous issue of al-Furqan Electronic Newsletter on “Optional Conditions in an Islamic Marriage” generated quite a few responses. Most of you found the article informative and timely. Some had comments and questions requesting further clarification. Two questions were important enough for me to answer them here for the benefit of the readers.

Question:

“I would contend that both parties to a civil marriage contract by implication have agreed to a division of property, spousal support and alimony per the civil laws. Islam enforces any civil contract provided it is Islamically legitimate. This is akin to Ay Seestani's ruling that when a person immigrates or becomes a citizen of a country he/she takes an oath to abide by the country's laws and is entering into a contract that is Islamically valid. It would appear there is nothing ghasbi about property acquired by a woman as result of application of civil laws upon dissolution of a marriage.”

Answer:

Registering a civil marriage, let us say in Canada, does not necessarily mean that both parties have agreed that in the case of divorce they will abide by the civil laws. There is no such implication in registering a civil marriage. Later in life, for example, if they migrate to another country and their marriage ends up in divorce, the Canadian civil laws would not apply there even though their Canadian marriage would be recognized as valid. And so there is no implied link between registering a civil marriage and civil laws of divorce.

In the absence of any optional condition, the division of property, spousal support and alimony would be Islamically legitimate *only* if both parties agreed to settle their disagreements through the civil court. Similarly, whatever is agreed upon out of court would be accepted by the shari‘a even if there were no optional conditions in the marriage contract. Finally, if you see the full sample of the marriage contract in the website mentioned in the article, you will see that we have given a variation of the 1st condition that in the case of divorce, “there will be an equalization of net family properties as described in s. 5(1) of Ontario’s Family Law Act (R.S.O. 1990, c. F.3)...” Then everything will be accepted from the shari‘a perspective.

A point which needed more clarity in the previous article was the following: Wherever there is no shari‘a court, a Shi‘a Muslim is allowed to approach a secular court to extract his or her right from a delinquent person. So, for example, if a Shi‘a lady had a marriage contract with optional conditions in it and her ex-husband refuses to honour that contract or to pay her *mahr*, then she has the right to approach a secular court to get her right from her ex-husband.

Question:

“In your sample clauses on giving the woman the right to divorce you have added that her right is subject to an agreement of some other person so that calmer minds would prevail (in your example all your suggestions are male - father, brother, alim etc.). Is it that while the husband can divorce without such consent women cannot make saner decisions under stress? As a man I think that examples you provide should consider the environment we live in, be fair to both sexes besides being within the ambit of the shariah.”

Answer:

The entire issue of optional conditions and the examples suggested by me are based on the observation of various divorces that I have handled or observed in the last two decades. The suggestions and proposed conditions in the article are not cast in concrete; they reflect the realities that I have observed in the community; otherwise, from a purely technical point of view, the husband *may* give to his wife the absolute right of divorce without any conditions.

However, in using the shar‘i mechanism to redress the problem of unfairness does not mean that we should completely ignore the Islamic laws. It is true that in the environment that we live in both sexes are considered to be equal but let us not forget what the great scholar, Murtaza Mutahhari, said that “equality does not mean similarity.” In spite of the politically correct statement that there is no difference between the men and the women, the folk psychology of the West explicitly recognizes the differences in the famous cliché that “men are from Mars and women are from Venus.”