

## Turkish Diyanet Ruling on Organ and Tissue Donation.

The Holy Quran and Sunnah do not offer any clear verdict on the issue of organ and tissue transplantation. Because there was no such issue to speak of during their times, neither have early Muslim scholars and jurists adjudicated a detailed ruling on the issue. Be that as it may however, the Holy Quran and Sunnah do offer general principles to shed light on unknown issues that may emerge with the passage of time. Faced with issues never before encountered and therefore left unsettled by the Qur'an and Sunnah, jurists have in the past employed these principles, as well as rulings clearly prescribed by the Quran and Sunnah on the status of comparable practices, to reach a verdict on the unknown issue through analogy. The rationale of this analogical approach was to leave not even a single problem unanswered. In light of the unknown status of organ and tissue transplantation, it is therefore best to employ the same method.

Man is a being honoured by the Almighty; and as such, holds a privileged place among all creation. Therefore, under normal circumstances it is legally –in the Islamic sense– impermissible to benefit from certain parts or organs of a human being, irrespective of whether the person is deceased or alive. Doing so is considered a violation of human sanctity. But again, the overarching principle is that under circumstances of necessity (*zaruret*), a given prohibition may be relaxed in proportion with what the necessity demands.

On the word of the Holy Quran and Sunnah, Islam has forbidden certain deeds and actions. For instance, the consumption –either as food or medicine– and trade of carcass, blood, pork and wine, is impermissible. Yet, in the circumstance of severe thirst or starvation, it is permissible to consume a tolerable amount of any one of the above items to remain alive (Al-Baqara, 173; Al-Maide, 3; Al-An'am, 119). Jurists have therefore concluded that circumstances of necessity may, to a minimal extent, render permissible what is normally deemed impermissible. Furthermore, such circumstances may not only serve relax the prohibitions expressly allowed by the Holy Quran, but also prohibitions in the general sense of the term. If the circumstances allow no other avenue for survival than the violation of the impermissible, these prohibitions may be relaxed only, however, to the minimal extent that allows one to survive.

In order to decide on the permissibility of transplanting organs or tissues from the deceased to the ill or wounded, knowledge of the following is essential:

On the most general level, whether or not dissecting the corpse to remove certain organs or tissues is permitted under circumstances of necessity;

Whether or not the given medical treatment is to be deemed necessary; which further pertains to the specific ruling on receiving medical treatment through means that are Islamically impermissible.

And if organ and tissue transplant is impermissible, then there is the question of determining the conditions by which it becomes so.

In relation, Muslim jurists have permitted the following:

Cleaving open a deceased mother's womb to save an infant who is still alive.

Transplanting bones to those suffering from broken bones, given that there are no other viable means of treatment.

With the consent of the surviving members of her family, performing an autopsy on the deceased to research cures for unknown illnesses and to thereby provide treatment for the ill who, in terms of still being alive, merit greater sanctity than the deceased.

Destroying certain parts of the deceased's body to save a person who is still alive.

In fact, an abridged version of the ruling (16.04.1952, act no: 211) passed by The Council of Consultation and Examination of Religious Works states:

“In the benefit and interest of the general public, it is permissible to conduct autopsy on the dead: on the condition that the surviving kin of the deceased give consent, that the motivation is to uncover the underlying causes of unknown diseases and to therefore prevent the potential harm that an unknown illness will otherwise continue to inflict on the public; and to ensure the treatment of those who in terms of still being alive merit greater attention than the deceased. The violation of the sanctity of the deceased this process entails is a negative yet inescapable aspect that, in the spirit of Islamic legislation, must be endured”.

Muslim jurists consider illness and diseases necessities that, like severe hunger and thirst, render permissible what under normal circumstances is impermissible. They have thus allowed treatment of severe illnesses with medication that contain ‘impermissible’ ingredients, if there are no other means of treatment. Today blood transfusion, organ and cell transplantation have become prevalent means of treatment. Therefore, in circumstances where saving a life or a vital organ hinges on no other means than blood transfusion or an organ/cell transplant, then under the above Islamic guidelines, these means ought to be considered permissible. The Council of Consultation and Examination of Religious Works has in fact also verified the permissibility of (25.10.1960, act no: 492) “transfusing blood to persons who have no other means of survival and transplanting corneas, from deceased donors who have given consent before their death, to those who will recover their vision through this operation”.

The High Commission of Religious Affairs has additionally declared (19.01.1968, act no: 3) that “Blood transfusion is permissible not only in cases where it ensures the survival of the patient but also in lesser cases of accelerating the treatment of an illness. This includes a heart transplant provided that medical and legal requirements are met”.

Authorised ruling bodies of various other Muslim countries outside of Turkey have also passed rulings of a similar nature.

Our Commission has concluded that the transplantation of organ and tissues is permitted provided that the following requirements are met:

There must be a case of necessity; in other words, an accredited and trustworthy doctor must conclude that transplantation is the only option to save a life or one's vital organs.

The donor must be deceased at the time of transplantation.

Consent must be acquired either from the donor before passing away or from the surviving relatives of the donor, which itself must not be against an explicit will of the deceased that disallows a transplant.

No fee whatsoever should be paid in exchange for the tissue and organs donated,

The recipient of the transplant must also give consent.

el-İsra, 70; et-Tin, 4

el-Hidaye, el-İnaye ve Feth'ül-Kadir 1/65; Fethu babi'l-İnaye, 1/126; Fetevay-ı Hindiye, 2/390

Cessas, Ahkamü'l-Kur'an, 1/156; İbnü'l-Arabi, Ahkamü'l-Kur'an, 1/55; Kurtubi, 2/232 ve 7/73; İbn Hazm, el-Muhalla, 7/426

Fetevay-ı Hindiye, 2/296; el-Va'yü'l-İslami, Sayı 137, Yıl 1396, Kuveyt; İstılahat-ı Fıkhiye, 3/157

Fetevay-ı Hindiye 2/390

The High Commission for Religious Affairs

<http://www2.diyamet.gov.tr/dinisleriyuksekkurulu/Sayfalar/OrganNakli.aspx> , 23.04.2014