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Clarification on Islamic Jurisprudence and Transplantation

Andrew C. Miller, MD,¹ Abbas M. Khan, MD,¹ and Amir Vahedian-Azimi, PhD²

We read with interest the article by Padela et al¹ on Islamic jurisprudence, organ transplantation, and the recent Fiqh Council of North America ruling.² Transplantation has long been contentiously discussed in Islamic medical ethics communities. In such dilemmas where the *Qur'an* or *Hadith* do not clearly describe the proper course of action, principles including *ijtihad* (independent legal reasoning),^{3,4} *istihsan* (preferential reasoning of jurists), *al-urf* (local customary precedent), and *al-masalih al-mursalah* (public interest or welfare) may offer guidance.^{5,6} *Ijtihad*-generated rulings (*fatawa*), however, are case specific and not globally binding.^{5,7,8} Jurist disagreements (*ikhtilaf*) are common and key to understanding the Islamic legal tradition.⁹ This means that a jurist's ruling on 1 case (eg, transplantation) is not by default invalidated or reversed by an opposite finding by a different jurist on a different case of the same topic.^{10,11} This may in part be because the merits, context, and participants in each case differ. A Muslim scholarly saying states: *our opinion is a right one with the possibility of being wrong, and others' opinions are wrong ones with the possibility of being right.*¹⁰ Failure to understand this concept may generate uncertainty, confusion, and aid conflict.

Important theological elements for understanding Islamic views toward transplantation include the sacredness of life (*Qur'an* 5:32), respect for the human body

and its use (*Qur'an* 17:36,70) and *Hadith* of the Prophet Muhammad ('alayhi as-salām).^{12,13} Accordingly, some may believe that organ transplantation/donation is prohibited; however, several Islamic jurisprudential principles have allowed others to determine its permissibility including (1) *necessity-breaks-the-law* (*darūra*); (2) working for the public interest or wellbeing of society (*al-masalih al-mursalah*); and (3) altruism (*al-ithar*). *Darūra* may allow for exceptions to general rules, while *al-masalih al-mursalah* and *al-ithar* may allow arguments that overrule the individual in favor of greater society.¹⁴

Disagreements exist regarding transplantation *fatawa*. Of 42 identified *fatawa* (Table 1), 23 were Sunni (13 permissible, 7 conditional, 3 prohibited), 16 were Shi'a (4 permissible, 11 conditional, 1 prohibited), and 3 were joint Sunni/Shi'a (1 permissible, 2 conditional). Thirty-six (86%) of *fatawa* permit organ donation conditionally or unconditionally. Autologous transplantation is widely accepted if performed for medical indication (ie, not cosmetic), success is likely, and it carries no mortality risk.¹⁴ Proposed restrictions to allogeneic transplantation including (1) donor has full mental capacity; (2) donor consent (may be granted postmortem by closest relatives)¹⁵; (3) adult (preferable >21 y);^{15,16} (4) medically determined to be lifesaving or able maintain the recipient's quality-of-life without suitable alternative; (5) recipient benefit exceeds donor harm and some stipulate; and (6) live donation only of nonvital (ie, self-renewing) or nonsingular organs (eg, hematopoietic cells, skin, kidney, lung, liver).¹⁴ Gonad transplantation is forbidden; however, other *internal* sex organs (eg, uterus) may be permissible.¹⁴

Given the quantity, language, and timeline of rulings, topic knowledge of individual religious leaders may vary. Public awareness of transplant *fatawa* is suboptimal.^{9,55-61} *Fatawa* have limitations and are case specific; context is important. A dissenting ruling arising within 1 context, time, or location is not necessarily binding on those in another, and vice-a-versa. Accordingly, transplant permissibility may justifiably vary by circumstance, time, location, and context.

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¹ Department of Emergency Medicine, Nazareth Hospital, Philadelphia, PA.

² Trauma Research Center, Nursing Faculty, Baqiyatallah University of Medical Sciences, Tehran, Iran.

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Correspondence: Andrew C. Miller, Department of Emergency Medicine, Nazareth Hospital, 2601 Holme Ave, 3rd Floor, Marian Bldg, Philadelphia, PA19152. (Taqwa1@gmail.com)

Andrew C. Miller: ORCID ID: 0000-0001-8474-5090

Abbas M. Khan: ORCID ID: 0000-0001-6295-3788

Amir Vahedian-Azimi: ORCID ID: 0000-0002-1678-7608

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TABLE 1.**Summary of Islamic *fatawa* regarding the permissibility of transplantation**

Y	Source	Sect	Permissible	Notes	Citation
1959	Sheikh Hassan Mamoon, Grand Mufti, Egypt (Fatwā no. 1084)	Sunni	Conditional	Deceased donor corneal transplants	17
1966	Sheikh Hureidi, Grand Mufti, Egypt (Fatwā no. 993)	Sunni	Yes	Extended prior ruling to other organs	18
	Mufti Mohammad Shafi (1897–1976; Pakistan)	Sunni	No		19
1969	International Islamic Conference (Malaysia)	Sunni	Yes		20
1972	Algiers Supreme Islamic Council	Sunni	Yes		20
1973	Islamic Religious Council of Singapore	Sunni	No		21
1973	Sheikh Khater, Grand Mufti, Egypt	Sunni	Conditional	Allowed retrieving skin from unidentified corpses	22
1978	Imam Nawawi (631-671H/AD1233-1272)	Sunni	Conditional	Bone and teeth	23,24
1979	Saudi Grand Ulama in 1978 (Decree No. 66)	Sunni	Conditional	Deceased donor corneal transplants	20
1979	Grand Mufti Gad al Haq, Grand Mufti, Egypt (Fatwā no. 1323)	Sunni	Conditional	Live and deceased donor transplantation if donated freely. Organ retrieving from unidentified corpse requires magistrate order.	25
1980	Kuwaiti Ministry of Charitable Endowments (Fatwā no. 132/79)	Sunni	Yes	Live and deceased donor transplantation.	26
1982	The Supreme Council of Ulama in Riyadh (Fatwā no. 99)	Sunni	Yes	Sanctioned autografts unanimously; live and deceased transplantation by majority.	16
1985	Islamic Religious Islamic Council of Singapore	Sunni	Yes		27
1987	Islamic Fiqh Academy of the Muslim World League (Decree no. 2, 10th session)	Sunni	Yes	Endorsed all prior <i>fatawa</i> on organ transplantation	28
1988	Fourth International Conference of Islamic Jurists (Resolution no. 1)	Shi'a and Sunni	Yes	Endorsed all prior <i>fatawa</i> on organ transplantation; clearly rejected organ trafficking; stressed altruism	29
1990	Sixth International Conference of Islamic Jurists (Decrees No. 56/5/6; 58/8/6)	Shi'a and Sunni	Conditional	Discussed transplantation from embryos, IVF projects, nerve tissue (including xenografts), anencephalic donors, and prohibited gonad transplantation.	30
1997	Sheik Mohammed Metwali al-Sharawi	Sunni	No		
1999	Ayatollah Al-udhma As-Sayyid Ali Al-Husaini as-Seestani	Shi'a	Yes	Live and deceased donor transplantation, and xenografts from animals considered unclean	31
1999	Grand Ayatollah Mohammad Taghi Behjat (Question no. 24)	Shi'a	Conditional	Deceased donor transplantation is permissible if donor is non-Muslim, and it is lifesaving for recipient.	32
2000	Grand Ayatollah Hossein Vahid Khorasani (Question no. 2894)	Shi'a	Conditional	Deceased donor transplant is only permissible if lifesaving. If performed then <i>dijah</i> must be paid. ^a	33
2000	Grand Ayatollah Seyed Ali Mohammad Dastgheib (Question no. 2969)	Shi'a	Conditional	Deceased donor transplantation in permissible, but <i>dijah</i> must be paid. ^a	34
2000	Islamweb.net (Fatwā no. 82240)	Sunni	Yes	Live and deceased donor transplantation, and xenografts with exception of porcine.	35
2001	Shaikh Ahmad Kutty	Sunni	Yes		36
2001	Grand Ayatollah Hossein Nouri Hamadani (Question no. 899)	Shi'a	Conditional	It is lawful for Muslims to receive transplants from non-Muslim donors if the donor is of the <i>'Ahl al-Kitāb</i> . ^b	37
2002	Grand Ayatollah Mohammad Ibrahim Jannati (Question no. 2991)	Shi'a	Conditional	Deceased donor transplant if lifesaving.	38
2002	Grand Ayatollah Hossein Ali Montazeri (Question no. 276)	Shi'a	Conditional	Deceased donor transplant from Muslim donor	39
2002	Islamweb.net (Fatwā no. 84780)	Sunni	Yes		40
2003	Islamic Fiqh Academy of the Muslim World League (Decree no. 3; 17th session)	Sunni	Conditional	Permits using leftover pre-embryos for stem cell research and treatment of serious ailments	41
2003	Islamweb.net (Fatwā no. 85514)	Sunni	Yes		42
2003	Grand Ayatollah Mohammad Asef Mohseni (Question no. 156)	Shi'a	Conditional	Permissible if donor is Muslim and it is lifesaving.	43
2004	Grand Ayatollah Seyed Ali Sistani (Question no. 85)	Shi'a	Yes	If lifesaving for recipient	44
2005	Grand Ayatollah Youssef Sanei (Question no. 246)	Shi'a	Yes	Permissible among and between Muslims and non-Muslims	45
2006	Grand Ayatollah Mirza Javad Tabrizi	Shi'a	No		46
2006	Grand Ayatollah Mohammad Fazel Lankrani (Question no. 375)	Shi'a	Conditional	Permissible if lifesaving for recipient, and donor is not approached after a life threatening or unbearable loss.	47
2007	Grand Ayatollah Mohammad Reza Nekounam (Question no. 240)	Shi'a	Yes	Permissible among and between Muslims and non-Muslims	48
2008	Main Khalid Al-Qudah (Fatwā no. 76784)	Sunni	Yes		49
2009	European Council for Fatwā and Research (second collection, resolution 2/6)	Sunni	Yes	If done within the prescribed limits of the <i>Shari'ah</i>	50
2010	Grand Ayatollah Seyed Ali Khamenei (Question no. 1292)	Shi'a	Conditional	Deceased donor transplant if: donor gave prior consent, the donor's death is not hastened, and the transplant is lifesaving	51
2012	Grand Ayatollah Naser Makarem Shirazi (Questions no. 282, 283)	Shi'a	Conditional	Permitted if saves recipient from death or major illness.	52
2013	Grand Ayatollah Seyed Ali Hosseini Khamenei (Question 12009)	Shi'a	Conditional	If donor is non-Muslim and it is lifesaving.	53
2016	Islamweb.net (Fatwā no. 332080)	Sunni	Conditional	Xenograft (including porcine) is permissible if no pure alternative exists and it's the only remedy	54
2018	FCNA	Shi'a and Sunni	Conditional	Prohibited organ selling, if considerable harm to donor, reproductive organs or living donor of vital organ. Requires informed consent. Deceased donation only after death by cardiac determination.	2

^aUnder Islamic law, *Dijah* is the financial compensation paid to the victim or heirs of a victim in the cases of murder, bodily harm, or property damage.^b*'Ahl al-Kitāb*, or 'People of the Book,' is an Islamic term that refers to Jews, Christians, Sabians, and sometimes members of other religious groups such as Zoroastrians.

FCNA, Fiqh Council of North America; IVF, in vitro fertilization.

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