

Re-examination of the Fatawa on Organ Donation in Light of Current Medical Research

Mufti Usman Maravia.

Correspondence: u.maravia@lancaster.ac.uk

Keywords: *Organ Donation, Fatwa, Islam, Medical ethics*

Introduction

Muslims in the UK face discord due to the clash of opinions on the 'opt-out' system to be introduced in April 2020. In this article, I share my opinion on how a careful re-examination of the fatawa that contribute to the prohibition of organ donation may provide a fresh perspective on how to advise on the new opt-out system.

Re-examination of the Fatawa on Organ Donation

The fatawa on organ donation have been re-examined over the decades as muftis became more informed of medical research. The earliest known discussion on organ donation was by the Saudi Quranic exegete Sa'di in 1925 [1]. The discussion encourages organ donation as a viable option for Muslims who seek an organ transplant. This discussion occurred two decades after the first corneal transplant was performed in 1906. The permissibility of blood transfusion and corneal transplants were officially given a permissibility status by the grand mufti of Egypt Sheikh Mamoon in 1959 [2]. Perhaps, the period of time that elapsed before the fatwa was released may surprise some, however, a number of developments occurred between Sa'di's discussion and Mamoon's fatwa on permissibility. These developments included the approval of Safar's ABC technique for resuscitation which became the basis for mass training of CPR. The first successful kidney transplant was performed between fraternal twins in 1959 [3]. These developments would have influenced the process of issuing the fatwa on the permissibility of organ donation, especially since the aforementioned developments contributed to the success of life-saving transplants.

A fatwa that precedes scientific discoveries requires re-examination. Further discussions on organ transplantation saw a number of different arguments from a theological perspective on the question of who owns the body and whether humans have any right to donate organs in life or upon dying. While such theological or philosophical

questions are not answerable by medical research, such questions have warranted much attention over the past few decades, questions to which science may provide insights. Medical science can help determine the point when an individual could be considered dead; or whether organ donation is the best treatment on a practical level, rather than the process being experimental. Neurological criteria for death, which revolutionised how end of life was determined, was adopted by the Harvard Ad Hoc committee in 1968 [4]. This year is significant as only a year earlier, the late grand mufti of Pakistan Muhammad Shafi issued a fatwa on the prohibition of organ donation [5]. The same year saw the first successful heart transplant in South Africa [6] followed by another in the United States [7]. The first successful liver transplant also occurred in the same year. Whether Shafi was aware of these successful transplants remains unknown. Nevertheless, these medical breakthroughs have led contemporary jurists to the re-examination of the arguments made by Shafi, whose fatwa could no longer be viewed as timeless.

Furthermore, re-examination of fatawa should be researched-based and in light of the latest medical developments. In the UK, organ donation has resulted in a difference of opinion involving the majority of Islamic jurists of south Asian affiliation being inclined to the mentioned fatwa by Shafi. On the other hand, other jurists of the same affiliation have considered the medical research which followed Shafi's fatwa. The numerous international conferences that have taken place in the past few decades in Egypt (1979) [8], Kuwait (1979) [9], Saudi Arabia (1985) [10], and in Europe (1995) [11] all agreed on the permissibility of organ transplantation for life-saving purposes as well as for increasing the quality of life, from both living and deceased donors.

Consequently, jurists in the Indian sub-continent were also divided over the issue in light of this new research. Qadhi Mujahidul Islam Qasmi [12] and Khalid Saifullah

Rehmani [13] now argue in favour of organ donation. Mufti Taqi Uthmani [14] and Mufti Radaul Haq [15] who although have reservations on absolute permissibility now acknowledge the view of permissibility of the abovementioned jurists may be accepted in times of necessity and candidly provided their congregation with the option to follow the ruling of ant reputable jurist.

The UK has seen further developments since the 90s. These advancements include the Human Tissue Authority establish a robust system to monitor organ storage and transportation. This particular regulation also answers some of the concerns raised by Shafi who dedicated a large section of his fatwa to organ trafficking and exploitation; an issue, which by contrast, is heavily monitored in the UK. The chair of the Muslim Council of Britain, Badawi issued a fatwa in 1995 for the British context advocating the permissibility of organ donation, a fatwa that was mentioned in the Journal of Medical Ethics [16]. In 2004, Mufti Kawthari [17], a British jurist of Deobandi affiliation continues to acknowledge the view of permissibility. However, since the Human transplantation Act Wales (2015), a number of Muslim scholars across the UK have not only explicitly stated the permissibility of organ donation but consider the act to be worthy of divine recognition. Since 2016, scholars including Musharraf Husain [18] and Faraz Adam [19] voiced their views on Islamic websites. Mansur Ali [20], has argued for a theological pluralist view of any position being correct due to the ijtihadi nature of the debate, one that requires independent reasoning. The author of 'Organ Donation and Transplantation in Islam - An opinion' Mufti Zubair Butt [21] has demonstrated how a fatwa can be re-examined in light of the changes to highlight that the situation of Muslims in the UK would arguably improve the situation rather than have drawbacks.

To summarise, the fatawa on organ donation evolved over time as new medical developments occurred and new systems were put in place. Additionally, such developments lead to the re-examination of the fatawa that were previously issued. The recent fatwa by Butt, in my opinion, is a refreshing reminder of how jurists continue to re-examine and critically analyse previously accepted fatawa in light of the wider discourse on organ donation and serves as a reminder that transparency between Islamic legal experts and leading medical experts must continue for the welfare of the Muslim ummah.

References

- [1] Al-Sa'di AR. *Majmua mu'allafaat, al-fawaid wa Iqtinas al-Awabid*. Doha: Al-Awqaf al-Qatariyya; 1925;25:95-100.
- [2] Dar al-Ifta al-Misriya, *Al-Fatwa Al-Islamiyah*, Cairo: The Supreme Islamic Council, Ministry of Endowment, *Fatwa of Sheikh Hassan Maamoon* (1959), 1982;7:2495.
- [3] Merrill JP, Murray JE, Harrison JH, Friedman EA, Dammin GJ. Successful Homotransplantation of the Kidney between Non-identical Twins. *NEJM*. [Online] 1960;262(25): 1251-1260.
- [4] Wijdicks E. The neurologist and Harvard criteria for brain death. *Neurology* [Online] 2003;61(7):) 970-976 [cited 2019 July 17]. Available from: <https://n.neurology.org/content/61/7/970/tab-article-info>
- [5] Shafi M. Aza Insani ki Paywandkari, in *Jawahir al-Fiqh*, 7:56-59. Karachi: Maktaba Darul Ulum Karachi; 2010.
- [6] Barnard CN. Human cardiac transplant: An interim report of a successful operation performed at Groote Schuur Hospital, Cape Town. *S African Medi J*. 1967;41(48):1271-4. [cited 2019 July 1].
- [7] Silbergleit A. Norman E. Shumway and the Early Heart Transplants. *Tex Heart Inst J*. [online] 2006;33(2): 274-275. [cited 2019 July 17].
- [8] Mamun H. al-Fatawa al-Islamiyya. Dar al-Ifta al-Misriya. 1959: 7:2552.
- [9] Seminar on new issues in organ transplantation (Kuwait: October 1989). Jeddah: Fiqh Academy and Islamic Organization of Medical Sciences (unpublished).
- [10] Islamic Fiqh Academy of Jeddah. Resolutions and recommendations of the council of the Islamic Fiqh Academy 1985-2000. [online] [cited 2019 July 17]. Available from: <http://www.scribd.com/doc/19237054/Resolutions-of-the-Council-of-the-Islamic-Fiqh-Academy>.
- [11] ECFR Fatwa. Final Statement of the Sixth Ordinary Session of the European Council for Fatwa and Research (Islamic Center Dublin: August 28, 2000). [cited 2019 July 17]. Available from: <https://www.e-cfr.org/sixth-ordinary-session-european-council-fatwa-research>
- [12] Mujahidul Islam, Q. Contemporary Medical Issues in Islamic Jurisprudence. 2017. Kuala Lumpur: A.S. Noordeen.
- [13] Rahmani KS. *Jadeed Fiqhi Masail*. 2010. Karachi: Zamzam Publications
- [14] Al-Kawthari M. Is organ donation permissible? *daruliftaa.com*. [cited 2019 July 17]. Available from: http://www.daruliftaa.com/question?txt_questionid=q-18480963
- [15] Radhaul Haq. *Fatawa Darul Uloom Zakariyya*. 2013;6:728-755. Delhi, India: Zamzam Publishers
- [16] Ranan CJ. UK's Muslim Law Council. 1996. UK's Muslim Law Council approves organ transplants. *The Journal of Medical Ethics*. [online] 22(2): 99.
- [17] Al-Kawthari M. Is organ donation permissible? *daruliftaa.com*. [cited 2019 July 17]. Available from: http://www.daruliftaa.com/question?txt_questionid=q-18480963
- [18] Hussain M. Organ donation is a gesture of generosity; Why Muslims should be donors. *musharrafhussain.com*. 2016. [cited 2019 July 17]. Available from: <https://www.musharrafhussain.com/organ-donation-is-a-gesture-of-generosity>
- [19] Adam F. *iwill solicitors.com*. Organ Donation an Islamic Perspective. 2018 [cited 2019 July 17]. Available from: <https://nhsbtbdbe.blob.core.windows.net/umbraco-assets-corp/16300/organ-donation-fatwa.pdf>
- [20] Ali MM. Mahdi institute. Shifting discourse in the Muslim organ donation debate: reports of finding. 2017. [cited 2019 July 17]. Available from: <https://sites.cardiff.ac.uk/islamukcentre/2017/08/22/dr-mansur-ali-shifting-discourse-in-the-muslim-organ-donation-debate-reports-of-finding>
- [21] Butt MZ. Organ Donation and Transplantation in Islam - An opinion. [cited 2019 July 17]. Available from: <https://nhsbtbdbe.blob.core.windows.net/umbraco-assets-corp/16300/organ-donation-fatwa.pdf>