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## **Legal and Ethical Issues of Organ Transplantation in Pakistan A Critical Appraisal in *Shari'ah*'s Perspective**

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### **Abstract**

*Organ Transplantation is one of the significant development in the area of medicine and practiced in almost every region of the world in order to save the lives of sick individuals. Due to the excessive demand of organs and shortage of availability, many of the complex legal, ethical and religious issues have been aroused in this field. Pakistan is viewed as one of the leading country in the world for transplant tourism, illegal buying and selling of organs particularly commercial renal transplantation and organ trafficking. The objective of this article is to highlight the illegal and unethical practices of organ transplantation prevailing in Pakistan and to critically appraise such practices in Shari'ah's perspective. In addition the aim of research is to spread light on the Shari'ah's ruling pertaining to organ transplantation and strict prohibition of organ trafficking and alike practices. The methodology of research is descriptive, analytical, and applied. The information is collected from books, scholarly articles, conference proceedings, seminar paper presentations and internet sources. In the end research made recommendation that government should take measures keeping in view the principles of Shari'ah in order to deal with the issues of transplantation tourism illegal selling and buying and organ trafficking. Additionally there is a dire need to monitor and regulate the practices of organ transplantation in the country by the government.*

### **Introduction**

Organ Transplantation means therapeutic use of organs, obtained from healthy living or deceased donor and transplanted into thousands of men, women and children suffering from end stage organ failure.<sup>1</sup> Human organ transplantation is considered a last hope to save the lives or improve the quality of lives of the patients of last stage organ failure.<sup>2</sup> The transplantation of organs may include, kidney transplantation, liver transplantation, pancreas transplantation, small intestine transplantation

and heart transplantation. The most common form of organ transplantation is kidney transplantation which is globally recognized as best treatment for the patient with end stage renal disease (ESRD)<sup>3</sup>

In order to carry out the process of organ transplantation the general bioethical principles must be observed.<sup>4</sup> Firstly, in case of living donor free consent needs to be obtained prior to the operation and in case of diseased persons legal consent for organ removal is required. Secondly the organ must be removed after the death of potential donor declared by the physician. Thirdly, an adult living donor must be related to the organ recipient. Fourthly, organ should not be removed from the body of minor for the purpose of transplantation. Fifthly commercial sale and purchase of any of human body part is strictly prohibited. Sixthly advertisement of organ availability with the intention of seeking money is not permitted. Seventhly it is not permitted for health practitioners to involve in such organ transplantation procedures that are subject to commercial transactions. Eighthly it is imperative that justifiable fee should be charged by the doctors for organ procurement and transplantation process. Lastly, on the basis of principle of justice and equality, organ should be made available to the most critical patients.<sup>5</sup> Keeping in view all the aforementioned bioethical principles, it is evident that the healthcare policies and interventions must be formulated for the wellbeing of the individuals, and any practice contrary to it is not at all permissible.

Unfortunately, the dilemma faces by the world today is that many of the illegitimate and unethical practices have been involved in the process of organ transplantation where the destitute people of developing countries are brutally exploited in order to obtain the organ.

#### **Organ Transplantation in Pakistan and Related Legislation**

Pakistan is viewed as one of the largest center for commercial renal transplantation.<sup>6</sup> The first procedure of renal transplantation was done in 1979 and the organ was taken from living related donor. Initially the ratio of these cases were very low as approximately 50 cases throughout the year but with the time this ratio gets doubled and in mid-1990s the number reached up to 100 cases per year.<sup>7</sup> In due course, the rapidly growing need of organs and the shortage of organ donors, leads towards the illegal and unethical practices of unrelated commercial transplantation.

Unfortunately in the recent times Pakistan is viewed as a leading country in the world for transplant tourism, illegal buying, and selling of kidneys from its deprived people to wealthy persons around the world.<sup>8</sup> These illegitimate and immoral practices were first initiated from India and in later years Pakistan, Philippine, Nepal, Egypt, and China emerged as the

centers of this crime.<sup>9</sup> Since Pakistan has emerged as one of the main centers for renal trafficking vast majority of vulnerable, low-income poor people from rural areas have created a thrift market for the sale of kidneys to the inhabitant of high-income countries.<sup>10</sup> This is the general pattern that trade of organs particularly kidneys flows from destitute residents of underdeveloped countries to the rich citizens of developed countries.<sup>11</sup> This pattern is known as transplant tourism in which traveler and donor both are involved.<sup>12</sup> In accordance to the estimate of WHO “*Pakistan hosted up to 1500 transplant tourists in recent years, next to China.*”<sup>13</sup>

The practice of commercial kidney transplantation in Pakistan was first observed after 1994 when some of the hospitals moved from their regular practice of related donor to unrelated paid donor. In accordance to the report of Sindh Institute of Urology and Transplantation, (SIUT) in 1991, 75 percent transplantation was from related living donors and by the time till 2003 it transformed into unethical and illegal practice and 80 percent transplantation was from living unrelated donors.<sup>14</sup> In later years the commercial transplantation of organs mainly kidneys, flourished in other medical institutions of Pakistan and it became the general practice to advertise the organ for sale on the internet as it is recorded that in 2005, almost 800,000 people searched for kidney transplantation.<sup>15</sup> Later in 2007, approximately 2000 illegal kidney transplantation was performed in a year and mostly recipients were foreigner.<sup>16</sup> These operations were usually performed in private hospitals or clinics and the organs were acquired from very penurious people of the country.<sup>17</sup>

The reason behind the development of international organ trade is the shortage of supply of indigenous organs.<sup>18</sup> Generally, potential patients traveled from developed countries of East Asia, Middle East on top of United States and Europe, in order to get organs by commercial transactions.<sup>19</sup> It is reported that fifty to seventy-five percent recipients are foreigners that's why the country generated revenue of 20 million US dollars annually<sup>20</sup> whereas the transplantation ratio is 10:1 for the local people.<sup>21</sup> According to the study of SIUT in Pakistan some 25000 people suffer from kidney failure every year, only 10 percent receive dialysis and 2.3 percent are able to get transplantation.<sup>22</sup> The reason behind is that in Pakistan one-third of the total population is living under the line of poverty and 65 percent population is living in rural countries. Most people are involved in bounded labour and owing to a huge amount of debt. These bounded labourers are the major source of kidney donors particularly in the province of Panjab. In accordance with the study conducted by SIUT mostly, donors are poor and bonded laborers. They are also targeted by the

organ traffickers by giving them an incentive that by selling the organ the earned money can be used to pay off the debt and to get freedom from this bondage.<sup>23</sup>

Organ harvesting or Organ trafficking is an obscure form of human trafficking and now has become an international issue with transnational dimensions.<sup>24</sup> From deceased donors, the organ is illegally harvested and transferred to various parts of the world in ice packing. However, in order to obtain organs from living donors, the traffickers use various means for instance through coercion, fraud and deceptively obtained consent. It has become more common that persons are kidnapped, sold or eventually killed to obtain their organs.<sup>25</sup> Unfortunately, Pakistan is not only a leading nation in transplant tourism, but people are also trafficked by fraud or deception in and across the border for organ harvesting. According to international media, Pakistan is placed in the top five countries that are involved in the trafficking of organs around the globe.<sup>26</sup> Because in Pakistan the majority of destitute individuals and their family members are vulnerable to various forms of trafficking simultaneously, for example, a person who is working in bounded labour may have to face sexual exploitation and there is possibility that he may be trafficked for organ harvesting, in this way all the forms of trafficking are to some extent interlinked.<sup>27</sup> Generally, people wish to migrate because of their economic misery and in search of a better standard of life to get away from debt but unfortunately, become the victim of such exploitation. In Pakistan, mostly the victim of organ trafficking belongs to rural areas, where they live in very poor conditions, and they trafficked within the country, between countries or regions for labour, sex or organ trafficking.

Pakistan did not have any law pertaining to organ transplantation until the beginning of the year 2007.<sup>28</sup> In the end of July 2007 the supreme court of Pakistan issued a ruling ordering to the government of Pakistan to pass a legislation in order to regulate the illegal and unethical practices of organ transplantation in the country. In response to the said order government of Pakistan formulated the "*Transplantation of Human Organ and Tissue Bill 2007*" including the provision with regard to prohibition of unrelated organ donation and recommended 10 years of imprisonment in case of anyone found guilty of being involved in commercial trade of organs.<sup>29</sup> Afterwards the bill was converted to an ordinance by the president of Pakistan. Subsequently the parliament of Pakistan officially passed "*transplantation of Human Organs and Tissues Act 2010*"<sup>30</sup> in order to curtail the prevalent practices of transplant tourism, commercial trading of organs and above all the crime of organ trafficking. The act explicitly

stated that *“a person can donate voluntarily any of his organ or tissue to any other living person who is a close blood relative”*.<sup>31</sup> Additionally *“transplantation shall be voluntary genuinely motivated and without duress or coercion.”*<sup>32</sup> The said provision refutes all elements of trafficking of the organ by stating that the donor must be legally and genetically related to the patient and his or her free consent is mandatory. In case of diseased, it is mentioned in the act that *“Any person who is not less than eighteen years of age may before his death, in writing duly signed and verified by the respective Evaluation Committee, donate any of his organ or tissue for transplantation.”*<sup>33</sup> This provision has elucidated that harvesting of an organ from dead bodies or its mutilation is an illegal act and strictly prohibited under the law. The government has established evaluation committees in each medical institution where the services of organ transplantation are provided. The basic purpose of the evaluation committee is to ensure that *“no organ or tissue is retrieved from non-related living donors without prior approval of the evaluation committee.”*<sup>34</sup> In case of dire necessity, it is permitted to take an organ from other than blood relatives but it should be done with free consent and the evaluation committees have to ensure that any organ shall not be obtained without the prior consent or approval of the donor. Act 2010 emphasized that the transplantation should be carried out by the recognized professional<sup>35</sup> and both donor and recipient should be informed regarding the medical effects of this procedure prior to operation.<sup>36</sup> In addition, there is a monitoring authority based on the provisions of the act, whose task is to compile the list of registered medical institutions for organ transplantation, to monitor the legal procedure, to ensure that all THOTA standards are followed and to investigate if there is any breach of the ordinance. Further, it is elucidated that *“no donor and person is empowered to give authority for removal of human organ except for the purpose of therapeutic purpose”*<sup>37</sup> further it is clarified that *“the removal of any organ without authority, shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one million rupees.”*<sup>38</sup>

The act strictly prohibits any form of commercial dealings involved in the human organ transplantation process as the act stated that it is not permitted *“to receive any payment for the supply of, or for an offer to supply any human organ”*.<sup>39</sup> The rest of the provision deals with the punishments that will be announced in case of violation of any rule discussed in the said act. The main purpose of this act is to regulate the activity of transplantation and most significantly to curb the commercial

trade of organs which may lead towards trafficking of human organs. Having all aforementioned provisions in the law still illegal and unethical practices concerning organ transplantation are accruing particularly in the rural areas of Pakistan. Here few recent reports are quoted in order to highlight the existence of such inhuman activities. The Thomson Reuters Foundation reported that many people are misled by the traffickers to make them agree for organ donation. For instance, women named Ismat Bibi a housewife in the village of Kot Momin in Sargodha district Punjab, having four children to feed and a sick husband to take care, quickly agreed to sell her kidney on the compensation of 110,000 rupees offered to her by traffickers with the statement that everyone does not need two kidneys.<sup>40</sup> Another case reported in south Asian morning post, Masood Ahmed who works in the wood workshop in Bhalwal district Sargodha, Punjab sold his kidney out of poverty.<sup>41</sup> The vulnerability of Ismat Bibi and Masood Ahmed is not exceptional. The traffickers exploited the donors by not informing them about the risks involved in the operation and gravity of its after-effects, as result donors made uninformed decisions.<sup>42</sup> In some cases, a patient operated for certain ailment and have reported that his kidney is harvested by the doctors without informing the patient.<sup>43</sup> Recently the case was reported in which Chinese male members were involved in organ trafficking by getting married to Pakistani girls and after traveling to China they used them for organ harvesting. There are massive amount of cases in which innocent people are fraudulently tapped by the traffickers, though official statistics of organ selling and trafficking in Pakistan is not available as it is comparatively an invisible form of trafficking in persons, men not talk about selling of organ, therefore it is hard to catch the people involved in such massive human rights violations.<sup>44</sup>

### **Organ Transplantation in Sharī'ah's Perspective**

*Sharī'ah* is a way of life to live, a system to be followed, a code of ethics to be adopted, and a constitution to be applied in the everyday life of human beings. Despite other injunctions, *Sharī'ah* also offered valuable teachings in the field of health and medicine. Diseases are viewed under *Sharī'ah* as a natural phenomenon which is not caused by stars, evil spirit or wrath of Allāh rather diseases are a form of suffering and expiation of sins. However, everyone is directed to seek treatment for every ailment.<sup>45</sup> At the first level, it is imperative to know what the Qur'ān teaches concerning the curing of diseases.

“وَإِذَا مَرِضْتُ فَهُوَ يَشْفِينِ”<sup>46</sup>

*And when I am ill, it is He Who cures me;*

The Prophet Muhammad ﷺ advised Muslims to seek remedy and treatment for a disease.<sup>47</sup> Abu Hurairah narrated that Prophet Muhammad ﷺ said: "There is no disease that Allāh has created, except that He also has created its treatment."<sup>48</sup> Further, He affirmed that "there is a cure for every illness, although we may not know it at the time"<sup>49</sup>. There is another hadith regarding cure of disease narrated by Ayesha (R.A), "When the Prophet visited any ailing member of his family, he would touch the sick person with his right hand and would supplicate: "Allāhumma Rabban-nasi, adhibil-ba'sa, washfi, Antash-Shafi, la shifa'a illa shifa'uka, shifaan la yughadiru saqaman [O Allāh! The Rubb of mankind! Remove this disease and cure (him or her)! You are the Great Curer. There is no cure but through You, which leaves behind no disease]."<sup>50</sup>

There are a number of contemporary issues that have arisen, particularly in the field of medicine and it seems difficult to find a direct ruling in Qur'ān and Sunnah concerning these issues. Organ transplantation is one of them which remained a matter of great discussion and disagreement among the learned Muslim scholars throughout the world.<sup>51</sup> As it is a matter of *ijtihad*, therefore, Jurists have presented strong arguments both for and against organ transplantation based on Qur'ān and Sunnah<sup>52</sup> and tried to find out the solution to the problem under the broader guidelines of *Sharī'ah*.<sup>53</sup>

### **The First Group: Prohibition of Organ Transplantation**

A group of the Muslim jurists in their religious Decree (*Fatawas*)<sup>54</sup> prohibited the practices of organ transplantation and based their opinion on certain rules derived from Qur'ān and Sunnah.<sup>55</sup> They believe that organ transplantation is not permissible from both living and dead because its ill effects are more than its benefits. They based their opinion on the following arguments.

The life of human beings is viewed as very precious and valuable under *Sharī'ah*, killing a soul is considered as killing of the whole humanity and saving a soul is just like saving the whole humanity.<sup>56</sup> It is further affirmed from the teachings of the Qur'ān and Sunnah that every individual has to preserve and protect his life.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا<sup>٥٧</sup>

*[O ye who believe! Eat not up your property among yourselves in vanities: But let there be amongst you Traffic and trade by mutual goodwill: Nor kill (or destroy) yourselves: for verily Allāh hath been to you*

*Most Merciful!]*

Allāh has made human beings the most honored creature on earth, blessed them with favours and declared them as the Crown of the earth.<sup>58</sup> It is very much depicted in the following verse.

”لَقَدْ خَلَقْنَا الْإِنْسَانَ فِي أَحْسَنِ تَقْوِيمٍ“<sup>59</sup>

*[We have indeed created man in the best of moulds,*

Further instructed them to maintain the honor and dignity of one another in life and even after death.<sup>60</sup> In this context mutilation or disfigurement of the human body is not permitted in *Sharī'ah*.<sup>61</sup> It is narrated by Abdullah bin Yazid Al Ansari that the Prophet Muhammad ﷺ “forbade mutilation (or disfigurement of bodies).”<sup>62</sup> Further with regard to the mutilation of the dead body, it is narrated that a man was digging a grave and tripped of bones the Prophet Muhammad ﷺ said, “breaking a bone of a dead person is similar to breaking the bone of living person.”<sup>63</sup> Ibn-e-Qudamah has explained this issue in these words: "And our submission is that chewing of any part of one's own body; sometimes leads to one's own death. In this way, one would become the killer of one's own self. Moreover, such eating does not ensure one's own survival."<sup>64</sup> In the light of the aforementioned references, the Muslim jurists stated that any form of aggression against the human body or even part of the body is cited as a crime.<sup>65</sup> In addition, they argue that the human body is a sacred trust (*amana*) of Allāh and no one is the owner of his own body, thus it is not allowed to any individual to donate any of his or her body parts.<sup>66</sup> As stated in the Qur'ān:

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَئِكَ كَانَ عَنْهُ مَسْئُولًا<sup>67</sup>

*[For every act of hearing, or of seeing or of (feeling in) the heart will be enquired into (on the Day of Reckoning)]*

Here at this stage if the legality of trading of an organ is brought into the discussion, as per Islamic law it will be null and void because it's an established principle in *Sharī'ah* that one cannot sell something until he owned that thing.<sup>68</sup> As it is declared in *Sharī'ah* that human beings are not the owner of their body therefore, they can neither sell nor donate any of their body organs and no one can harvest from the dead body. Harvesting of the organ is not only a clear violation of the principle of Islamic law but a serious exploitation of human beings.

In addition, jurists rely on another important principle of the Islamic law that when the evidence of prohibition conflicts with the evidence of



permissibility, preference will be given to prohibition, based on this principle jurists argue that in case of organ transplantation prohibition is the mutilation of the body which is prohibited act.<sup>69</sup> There are several pieces of evidence related to the validity of this principle. It is narrated by Adiy bin Hatim that Prophet Muhammad ﷺ said: "I asked the Messenger of Allāh about hunting and he said: 'When you shoot your arrow, mention the name of Allāh, and if you find that it (the game) has been killed, the eat it unless you find that it fell into some water, and you do not know whether the water killed it or your arrow.'<sup>70</sup> Additionally, jurists who disallowed organ transplantation opines that its permission may lead towards unrestricted sale and purchase of human organs which is completely against the honor and dignity of human beings and strictly prohibited in *Sharī'ah*.<sup>71</sup>

### **The Second Group: Legality of Organ Transplantation**

Whereas the other group of Muslim scholars permits the practices of organ transplantation by passing the religious Decree (*Fatawas*)<sup>72</sup> and based their opinion on the broad principles of *Sharī'ah*. They believe that organ transplantation is permissible but with certain conditions. Their views are based on the following broad guidelines of *Sharī'ah*.

In accordance with another group, there is a general rule in *Sharī'ah* that it is prohibited to harm or mutilate the dead body of any individual irrespective of Muslim or non-Muslim for some disruptive reasons but there is an exception to this general rule especially in perspective of necessity (*Darurah*). Therefore, in the case of post-mortems<sup>73</sup> or organ donation, it will not be viewed as an act of mutilation or disrespect of the cadaver.<sup>74</sup> The reason is that if any harm is done to the corpse while removing an organ, it should be weighed against the benefit obtained through this, the new life is given to the recipient. The jurists deem that in order to save the life of an individual, disgrace of others could be ignored and this is based on the principle that preservation of human life is more preferred than the harm befalls to the corpse.<sup>75</sup> The proceeding example will further explain the said principle. If a pregnant woman dies and the baby inside her womb shows movement, in that case, if it is felt that the child is still alive and at the stage of development in which a child can normally remain alive, her corpse would be cut open since it would save a human life. And it would be better to allow some stain on human dignity than to become instrumental in killing a living bone.<sup>76</sup> This means that if a mother expires and her fetus shows some signs of life, jurists have permitted to operate the mother to bring the child out from his womb and the wisdom behind is that the dignity of a living one has precedence over

a dead one. Accordingly, the dignity of death can be ignored to save future lives. Additionally, despite that, all jurists had a consensus that the mutilation of the human body is a disgraceful act but with the time the procedure of organ transplantation has improved and modern procedures of transplantation do not violate the sanctity of the human being rather these methods are respectful and handle the human organ gracefully.<sup>77</sup>

Whereas, in the case of the living donor the principle of “*doing no harm*” is applied. Based on the principle, donor cannot donate any one of his vital organ which can affect his own life. It will be viewed as an act of suicide or homicide, which seemed the most abominable crime in *Sharī'ah*. Such donation of an organ is acceptable which provides no harm or minimal harm to the health of the donor and benefit that the recipient acquire is greater than the harm.<sup>78</sup> This is based on the general principle of “*accepting the lesser harm when faced with two evils*” which means that the harm incurred by the disease, that can take the human life, is much more as compared to the harm incurred by donation of an organ.<sup>79</sup>

Another general principle of *Sharī'ah*, which supports the above-mentioned argument is “*The necessities make the prohibition permissible*.”<sup>80</sup> for instance in the case when the life of a person is in danger the prohibition of eating carrion and drinking wine, is deferred.<sup>81</sup> This principle has been derived from the following verse of the Qur'ān.

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَحُمَّ الْخَنزِيرِ وَمَا أُهْلَ بِهِ لِغَيْرِ اللَّهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

[He hath only forbidden you dead meat, and blood, and the flesh of swine, and that on which any other name hath been invoked besides that of Allāh. But if one is forced by necessity, without wilful disobedience, nor transgressing due limits, - then is he guiltless. For Allāh is Oft-forgiving Most Merciful.]

Undoubtedly the Human body is the sacred trust of Allāh and every individual is answerable for this. The jurists in perspective of the *Sharī'ah*, stated that human beings are entrusted with the body and have legal authority on it, for instance, he can use his body for work that might be hard and grueling, or he can volunteer for a war where he may be exposed to the death.<sup>83</sup> Therefore everyone should use it in accordance with the ways recommended by Allāh and his messenger Muhammad ﷺ and in case of any violation or misuse of the body, everyone is accountable on the day of resurrection, and wrongdoer will be punished by Allāh. In this context, organ donation is not the act of transgression rather it is viewed as an act of benevolence and a gesture of love for humanity which are fundamental

teachings of Islam.<sup>84</sup> Abu Hurairah narrated that Prophet Muhammad ﷺ said "Whoever relieves a Muslim of a burden from the burdens of the world, Allāh will relieve him of a burden from the burdens on the Day of Judgement. And whoever helps ease the difficulty in the world, Allāh will grant him ease from a difficulty in the world and in the Hereafter. And whoever covers (the faults of) a Muslim, Allāh will cover (his faults) for him in the world and the Hereafter. And Allāh is engaged in helping the worshipper as long as the worshipper is engaged in helping his brother."<sup>85</sup>

*Sharī'ah* always encourages Muslims to search for the cure of diseases as Allāh has made a cure for every ailment. Based on the above-mentioned arguments the group of jurists viewed organ transplantation as a novel method of treatment and source to save the lives of many individuals. Consequently, the jurists declared that organ transplantation from both living and dead is permissible with certain strict conditions.

The international Fiqh academy (*Majma' al Fiqh al-Islami*) in its fourth session in Jeddah (dated 6 February 1988) discussed the issue of organ transplantation in a detailed manner. Many of the renewed scholars from around the world participated in the conference and investigated the issue of organ transplantation minutely and examined its effects on society. After extensive research, they sanctioned all previous *fatwas* and issued *Sharī'ah* ruling with regard to organ transplantation. Firstly it is allowed to transplant an organ from one place of the body to the other in order to regulate the function and correct the fault. Secondly, it is allowed to transplant an organ from the body of one person to another with the condition that the donor should be mature and decide without any external pressures. Thirdly it is permissible to use the part of an organ that has been removed because illness can be implanted to benefit another person such as the cornea of an eye. Fourthly it is strictly prohibited and illegitimate to transplant any vital organ on which the life of any individual depends such as lungs, heart, etc. Fifthly it is prohibited to take an organ from a living person that can damage any major function of his body although he is still alive. Sixthly it is permissible to take an organ from dead person in order to save the life of another individual whose life can be saved with this organ but this must be done by getting the free consent of the donor before his death or through the will of donor or with the permission of his relatives (hires). In such cases where the identity of the dead body is unknown, the head of the Muslim state can give permission, nevertheless, it is imperative to know that the organ shall be removed from a diseased person only after the verification of his death through a reliable medical procedure.<sup>86</sup> The Muslim jurists had accepted brain death as a condition of death in 1986

and paved the way for a donation of stem cells and tissues.<sup>87</sup>

Undoubtedly the organ and tissue transplantation plays a vital role to protect the interest and preserve the lives of the donor and the recipient.<sup>88</sup> Nevertheless, organ transplantation is an extremely complicated issue from an ethical and religious perspective and it cannot be limited to a single ethical value.<sup>89</sup> The most common ethical issues involved in it are the illegal sale of organs, coercion for donation and violation of rights of donor and recipient.<sup>90</sup> These issues need to be addressed in *Sharī'ah's*, perspective in order to make organ transplantation a beneficial treatment for humanity rather than an exploitative practice.

The majority of the Muslim jurists are in agreement that organ transplantation is permissible under *Sharī'ah*, but with the conditions that it should be beneficial and helpful for the recipient, it does not cause any harm to the donor, and most importantly the donor donates the organ voluntarily without financial compensation.<sup>91</sup> The Muslim jurists have issued the religious decree (*fatwa*) in which they have strictly condemned the paid donation and prohibited trading of human organs<sup>92</sup> because they viewed that once the human organs are permitted to be sold then it will be impossible to safeguard the humans from exploitation. The exploitation of human beings is contrary to the basic objectives of *Sharī'ah* under which the right of free consent is granted to every individual thus to coerce someone to donate the organ or to harvest the organ by fraud are not at all permissible under *Sharī'ah*. The Penang Fatwa committee of Malaysia issued a very comprehensive fatwa on December 30, 2009, regarding organ transplantation donation in which the committee reiterates that the transplantation must be performed with the willingness and after taking the consent from the donor, any form of coercion by anyone is not at all acceptable under *Sharī'ah*. It is further stated that written consent should be taken from the donor and he has the right to withdraw his consent at any time. The donor must be an adult above the age of 18 years and donate his organ with his free will, in case of a minor guardian cannot take the decision to donate the organ of the person under his guardianship.<sup>93</sup> In the case of the deceased, the consent will be taken by the relatives in the presence of two witnesses.<sup>94</sup> In addition, organ transplantation is viewed as a medical intervention that touches the fundamental rights of donor and recipients, jurists stressed that rights of both individuals must be protected in any situation as a violation of human rights is against the central principle of *Sharī'ah* which is to preserve and protect the honor and dignity of human beings.<sup>95</sup> In nutshell, organ transplantation under *Sharī'ah* is an act of kindness and humanity.

## **Conclusion**

There is no doubt that organ transplantation is a great source to save the lives of thousands of patients around the globe but unfortunately illegal sale and purchase of organs for transplantation purpose has become a combative ethical practice in which the disrespect of whole humanity is involved. Scholars argue that it's not only against the safety of the donor's health but an unjust financial incentive for poor people as they received very small amount of money in exchange of their organs. By the time these immoral practices have been transformed into international crime and mostly poor people from developing countries are trafficked and forced to sell their organs in exchange of money. Pakistan is viewed as a leading country in the world for such inhuman and immoral practices. Despite of related legislation still this inhuman business is going on and people are being exploited due to their unfortunate financial conditions and illiteracy. Whereas under *Sharī'ah* organ transplantation is an act of benevolence and altruism. It is among the basic teachings of the Qur'ān<sup>96</sup> and Sunnah<sup>97</sup> to be kind and helpful towards one another particularly in times of need and difficulty. In order to fulfill this noble cause, one should not violate the ethical and moral values connected with this phenomenon. *Sharī'ah* believes in non-exploitative practices of obtaining organs and strictly condemned all the current illegal and unethical practices of organ transplantation that includes organ tourism, and organ trafficking.

## **Recommendations**

Keeping in view the principles of *Sharī'ah* following social, administrative and legal, measures can be taken or reforms can be suggested in order to develop a holistic system to preclude illegal and unethical practices of organ transplantation from Pakistan.

- In order to prevent any crime, the strict implementation of laws is prerequisite, which can help to minimize the intensity of the crime and protect the general public to be the victim. Therefore it is the responsibility of the government of Pakistan to ensure the strict implementation of “*transplantation of Human Organs and Tissues Act 2010*” in order to make the process of organ transplantation ethical and legitimate and to protect the vulnerable people from exploitation and oppression.
- Law enforcement agencies needs to coordinate with the authorities to keep on check on medical doctors, clinics and hospitals involved in the procedure of organ transplantations.
- Seminar and conferences should be conducted and media cell should be established in order to spread public awareness concerning organ

transplantation and educate those regarding benefits and risks involved in organ donation.

- In addition people must be encouraged to inform relevant authorities regarding illegal practices of organ trafficking accruing in their societies.
- Foreign office should be more vigilant while issuing visa to the foreigners.
- Special monitoring authority should be constituted who directly work with the district police in order to identify the malpractices of organ trafficking.
- In Pakistan the law of organ donation from deceased person is equal to nothing, there is a dire need to develop a detailed legislation at national level and people should be encouraged to donate their organ after the death and nominate some relative who is authorized to sign the consent form on behalf of them.
- Last but not the least being a Muslim state Government of Pakistani shall recourse to the principles of *Sharī'ah* which proposes a complete course of life and described a comprehensive mechanism in order to combat illegitimate, inhuman and immoral practices.

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<sup>54</sup> *Religious Decree (Fatawa) is considered as an important instrument of Islamic Jurisprudence, particularly in those situations when the new problems and challenges arise. These problems need to be studied in depth and to come up with the appropriate solution that is acceptable for the rest of Muslim Ummah.*

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<sup>56</sup> *[On that account: We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole*

people. Then although there came to them Our apostles with clear signs, yet, even after that, many of them continued to commit excesses in the land.] (Al-Mā'ida: 32). See: Hassaballah, Abdel Moneim, *Definition of Death, Organ donation and interruption of treatment in Islam*, (Cairo, Egypt: Cairo University and The Arab Contractor, Nasr City, 1996): 964.

<sup>57</sup> Al-Nisā': 29.

<sup>58</sup> [We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favors, above a great part of our creation.] (Al-Isrā': 70).

<sup>59</sup> Al-Tīn:4.

<sup>60</sup> Muhammad Burhan ud Din Sanmbhali, *Insani Khon or Aza ka Istimal, Islam or Asr e Hazir* 17, (October 1998): 47.

<sup>61</sup> Al- Qushairi, *Kitab Sahih Muslim Bihsreh an Nawawi, Kitan Al Jihad*, (Beirut: Dar Al Fikr 1972, vol.12, 37. cited from: Albar, *Organ Transplantation*, 818. See also: Qazi Mujahid ul Islam, Qasimi, *Contemporary Medical Issues in Islamic Jurisprudence*, (New Delhi India: Islamic Fiqh Academy, 2008), 61.

<sup>62</sup> Sahih AL-Bukhari, *The Book of Oppressions, and Chapter (30): Robbing away somebody's property publicly*, Hadith no. 2474, In Book reference, book 46, hadith 35, UCS-MSA web (English) reference: vol.3, Book 43, Hadith 654. <https://sunnah.com/bukhari/46/35>

<sup>63</sup> Sunan Ibn Majah, *Chapter Regarding Funerals*, English Book reference, vol.1, book 6, hadith 616, Arabic Reference Book 6, Hadith 1648. <https://sunnah.com/urn/1289660>. See also: Sunan Abi Dawud, *Book of Funerals (Kitab Al-Jana'iz) Chapter (1193) If a Gravedigger Finds Bones, Should He Leave That Place?* Hadith no. 3207, In Book reference, book 21, hadith 119, English translation: Book 20, Hadith 3201. <https://sunnah.com/abudawud/21/119>. See also : Muwatta Imam Malik, *Book of Burials*, UCS-MSA web (English) reference: Book 16, Hadith 45, Arabic Reference: Book 16, Hadith 567. Available at: <https://sunnah.com/urn/405640>

<sup>64</sup> In Qudamah, *Al Mughni*, (Bairut: Dar ul Fiqr, 1405 H) vol.9, 335.

<sup>65</sup> Abdul Qadir Awdah, *Al Tashri Al jni al Islami Muqarranah bi al Qanun al Wadai* (Cairo: Dar al Turath al Arabi, Matba al Madani, n.d) vol.2, 5. Cited from: Abul Fadl Mohsin Ebrahim, *Organ Transplantation: Contemporary Sunni Muslim Legal and Ethical Perspectives*, *Bioethics* 9, no.3/4 (1995): 293. [https://www.academia.edu/3415058/ORGAN\\_TRANSPLANTATION\\_CONTEMPORAR\\_Y\\_SUNNI\\_MUSLIM\\_LEGAL\\_AND\\_ETHICAL\\_PERSPECTIVES](https://www.academia.edu/3415058/ORGAN_TRANSPLANTATION_CONTEMPORAR_Y_SUNNI_MUSLIM_LEGAL_AND_ETHICAL_PERSPECTIVES)

<sup>66</sup> Mufti Muhammad Shafi, *Insani Aza ki Paawand ari; shariat Islamiyah ki Roshni man* (Karachi Pakistan: Dar al Ishaat 1967), 29-35.

<sup>67</sup> Al-Isra'h :36. See also: [Have We not made for him a pair of eyes? And a tongue, and

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*a pair of lips? And shown him the two highways?]* (Al -Balad:8-10)

<sup>68</sup> Charles Hamilton Trans. *The Hedaya: A Commentary on the Mussulman Laws*, (Lahore- Pakistan, Premier Book House, 1957), 286. See also: Emrahim, *Organ Transplantation: Contemporary Sunni Muslim*, 294.

<sup>69</sup> Qasmi, *Contemporary Medical Issues in Islamic Jurisprudence*, 59.

<sup>70</sup> Sunan an-Nasa'i, , *The Book of Hunting and Slaughtering* , Chapter (18): *One Who Shoots At The Game And It Falls Into Water*, Hadith no. 4229, In Book reference, book 42, hadith 36, UCS-MSA web (English) reference: vol.5, Book 42, Hadith 4303. <https://sunnah.com/nasai/42/36>.

<sup>71</sup> Ammad ul Hassan Azad Farooqi, *Islam our Asr-e-jadid*, (New Dehli: Zakir Hussain Institute of Islamic Studies), 121.

<sup>72</sup> Here are some of recent Fatwas regarding Organ Transplantation. Fatwa of the Grand Mufti of Egypt Sheikh Maamoon (Fatwa no.1065, dated 9 June 1959), sanctioned blood transfusion, He also sanctioned corneal transplants (Fatwa no.1084, dated 14 April 1959) from unidentified cadavers and from those who agreed to donate by themselves at the time of death. His successor Grand Mufti of Egypt sheikh Hureidi extended the Fatwa and includes transplantation of other organs (Fatwa no.993). Grand Mufti Sheikh Khater, issued a Fatwa in 1973 by allowing the vesting of skin from unidentified dead body. Grand Mufti Gad Al Haq sanctioned organ donation from the living with the condition that no harm was done to the donor and donated freely for the love of Allah and his fraternity. He also sanctioned cadaveric donor provided there is will, testament and consent of the relatives of the deceased. In case of unidentified corpse the order of the magistrate is required before harvesting the organ. (Fatwa no.1323, dated 3 December 1979). Dar al-Ifta Almisryyah, Al-Fatwa Al-Islamiyyah, Cairo: The supreme Islamic Council Ministry of Endowment) cited from: Muhammad Albar, *Organ Transplantation: A Sunni Islamic Perspective*, 819-820. Saudi Grand Ulama sanction corneal transplant in 1978 (Fatwa no. 66H1397) the supreme Islamic council of Algiers sanctioned organ transplantation in 1972. Whereas in Malaysia, the organ transplantation was sanctioned by International Islam conference in April 1969. See: Abu Zaid B. Attashrith Al-Gothmani Wanagel Watta'weed Allnsani, *Majalat Majmah Al-Fiqh Al-Islamic*, Jeddah: Organization of Islamic Conference, 1988; 1:145-6. Cited from: Mohammad Albar, *Organ Transplantation: A Sunni Islamic Perspective*, p. 819-820. The Saudi Grand mufti unanimously sanctioned autografts (Fatwa no.99, 1982) and majority agreed to permit donation of organ by both living and dead by consent or through will or permission of relatives (next to kin). Kuwait fatwa of the ministry of charitable Endowment no 1342/79, 1980 sanctioned live and dead organ donation, later reiterate that the living donor should be of age of 21 to give consent and donate. The issue of brain death was left untouched in previous fatwas, in the third international conference of Islamic jurists (1986) the historic resolution (no.5) was passed with majority in which the brain death was equated with the cardiac and respiratory death. In 1987, the Islamic league conference of jurists held in

Makkah Al Mukarrah and passed decree (Fatwa, 2) recognized all previous fatwas on organ transplantation but did not recognize brain death as death but this decree received less popularity among the concerned individuals. Cited from: Albar, *Organ Transplantation: A Sunni Islamic Perspective*, 819-820.

<sup>73</sup> The permanent committee for religious Decree (Fatawa) declared that in specific cases Post mortem or dissection of the body is allowed in Islamic law. Firstly in order to find the reason of death, to convict the criminals by which there are no other avenues to come to the truth (Al Haq). This is based on the Shari'ah principle of establishing justice in a ruling given by the court order to avoid injustice (zulm), from happening to the innocent to ensure the guilty not to escape from the punishment as a result of his crime. See: Wahbah al-Zuhayli, *Al Fiqh al-Islami wa Adillatuhu*, (Karach: Dar ul Ishaat, 2012) 7/3. In *al-Ifta'*, The Permanent Committee for Legal Rulings (Fatawa) in Saudi Arabia conclude regarding dissection on dead bodies that Dissection is allowed to discover if there is a criminal act causing the death is sanctioned, too see if there is a contagious disease and to then conclude how to stop its spread is sanctioned, and for educational and Training purposes. Cited from: Dr. Zaki Badawi, *Organ Transplantation*, last updated on 29 Oct 2019). Online at: <http://www.iol.ie/~afifi/Articles/organ.htm>. See also: MH. Badawi, *Life, Death and the Religion-An Islamic View, Issues in Bio Medical Ethics*, (India: Macmillan, 1990).

<sup>74</sup> Abu Abdullah Ahmed bin Muhammad bin Hanbal ash-Shaibani, *Msanad Imam Ahmed bin Hanbal*, (Cairo: Dar al-Maarif, nd) 1:338, 2:13, 5:168, 173. Cited from: Mohammad Albar, *Organ Transplantation: A Sunni Islamic Perspective*, 818.

<sup>75</sup> A. Sharaf ud Din, *Al-Ahkam Asriyah Lil-Amal Attibiyah*, (Kuwait: Council of Culture, Art and literature, 1993), 89-160.

<sup>76</sup> Rahmani, *Jadid Fiqhi Masail*, 74.

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<sup>81</sup> Dr. Zaki Badawi, "Organ Transplantation, Islam, Fiqh, Fatwa, Ruling, Shari'ah- A Juristic Ruling regarding Organ Transplantation", *Islamic Voice* 12, no.8, (1998):140. See also: Muhammad Ilyas, Mukhtar Alam, and Habib Ahmad, "Islamic Perspective of Organ Donation in Pakistan", *Saudi Journal of Kidney Disease and Transplantation* 20, no.1, (2009): 154-156. <http://www.sjkd.org/article.asp?issn=1319-2442;year=2009;volume=20;issue=1;spage=154;epage=156;aulast=Ilyas#ref10>

<sup>82</sup> *Al Baqara*: 173.

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<sup>84</sup> Albar, *Organ Transplantation: A Sunni Islamic Perspective*, 819.

<sup>85</sup> *Jami at-Tirmidhi, Chapters on Righteousness And Maintaining Good Relations With Relatives, chapter(19) What Has Been Related About Covering(The Faults) of The Muslims, Hadith 1930, In Book reference, Book 27, Hadith 36, English Translate, vol.4, Book 1, Hadith 1930. <https://sunnah.com/tirmidhi/27/36>*

<sup>86</sup> *Fiqh Academy Book of Decrees, (decree no.1:55-58) Conference of Islamic Jurists, Jeddah Fiqh Academy and Islamic Organization of Medicine Sciences, 1988// p.34. See also: Albar, Organ Transplantation, 20.*

<sup>87</sup> *The board of Islamic Fiqh council (a part of Muslim World league) in its third international conference in Amman, Jordan in 1986 passed a resolution (Qarar) concerning death and transplantation of human organ. The resolution declared that "A person is considered legally dead, and all the principles of Islamic law can be applied when anyone of the following signs are established. 1. Complete stop age of the heart and breathing, and doctors decide that it is irreversible. 2. Complete stoppage of all vital functions of the brain, the doctors decide that it is irreversible, and the brain has started to degenerate." See: Daar AS, Organ donation-World Experience, The Middle East, Transplant Proc, 23, no.5, (1991): 2505-2507. <https://www.ncbi.nlm.nih.gov/pubmed/1926453>. See generally: Moosa E, Brain death and Organ Transplantation-an Islamic Opinion, S Afr Med Journal, 83, no.6, (1993): 85-6. <https://www.ncbi.nlm.nih.gov/pubmed/8211452>.*

<sup>88</sup> *D Parturkar, Legal and Ethical Issues in Human Organ Transplantation, Med Law, 25, no.2, (2006): 389-398. Abstract. <https://www.ncbi.nlm.nih.gov/pubmed/16929814>.*

<sup>89</sup> *Mohammad Ali Albar and Hassan Chamsi-Pasha, Contemporary Bio Ethics: Islamic Perspective, (New York, Springer Cham Heidelberg, 2015): 221.*

<sup>90</sup> *A.S. Daar, "Paid Organ Donation-the Grey Basket Concept", Journal of Medical Ethics, 24 (1998): 365-368. Last updated on 1 November 2019. Online at: [https://pdfs.semanticscholar.org/5dbd/3f7bbe4f9be3d9604ce25a561ec82b7dbb24.pdf?\\_ga=2.187649448.1080410327.1572667176-528230596.1570637287](https://pdfs.semanticscholar.org/5dbd/3f7bbe4f9be3d9604ce25a561ec82b7dbb24.pdf?_ga=2.187649448.1080410327.1572667176-528230596.1570637287)*

<sup>91</sup> *Debra Budiani Othman Shibly, "Islam, Organ Transplantation and organ Trafficking in the Muslim World: Paving a Path for solutions" Muslim Medical Ethics: Theory and Practice (October 2016): 2.*

<sup>92</sup> *Fiqh Academy Book of Decrees, (decree no.1:55-58) Conference of Islamic Jurists, Jeddah Fiqh Academy and Islamic Organization of Medicine Sciences, 1988//, 34. See also: Albar, Contemporary Bio Ethics, 20. See also: Shibly, Islam, Organ Transplantation and organ Trafficking, 2.*

<sup>93</sup> *Albar, Contemporary Bio Ethics: Islamic Perspective, 220-221.*

<sup>94</sup> *Ibid.*

<sup>95</sup> Bakari AA, Abbo Jimeta US, et al., “Organ Transplantation: Legal, Ethical and Islamic Perspective in Nigeria”, PubMed, 18, no.2, (2012): 53-60. <https://www.ncbi.nlm.nih.gov/pubmed/24027394> .

<sup>96</sup> [For Allah is with those who restrain themselves, and those who do good. (Al Qur'ān, 16:128) Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition. ](Al Nahl: 90)

<sup>97</sup> It is narrated by Abu Hurairah, that prophet Muhammad ﷺ said “Whoever relieves a Muslim of a burden from the burdens of the world, Allah will relieve him of a burden from the burdens on the Day of Judgement. And whoever helps ease a difficulty in the world, Allah will grant him ease from a difficulty in the world and in the Hereafter. Cited from: Jami At Tirmidhi, Chapters on Righteousness And Maintaining Good Relations With Relatives Chapter (19): What Has Been Related About Covering (The Faults) Of The Muslims, Hadith no. 1930, In Book reference, Book 27, Hadith 36, English translation: vol.4, Book 1, Hadith 1930. <https://sunnah.com/tirmidhi/27/36>