

Review article:

The Maximus of Necessity and Its Application to Organ Transplantation: An Islamic Bioethical Perspective

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Abstract:

Islam is second largest religion being practiced around the globe. It is fastest growing believe and rapidly expanding in the western world despite several misunderstanding including Islamic standpoint on organ transplantation and tissue grafting. The objective of this study is to determine the Islamic view point on organ transplantation and tissue grafting with special reference pertaining to human needs under the ambit of *Shariah* doctrine of necessity and world religions. Since, Islam and other world religions have given immense consideration to humans whether they are alive or dead, and the desecration of human body is considered a violation sufficed to a great sin. Injunctions of the holy *Quran* and *Sunnah* have evidently expressed sanctity to human life/body. Hence, taking one's life without a legal rights or even inflicting any sort of harm, injury, and aggression against an individual is termed an unlawful act. Notably, some scholars contended that, classical jurists' are silent on the issue of organ transplantation predominantly the transfer of organs from one species to another species. But, in reality, our argument is that, the organ re-plantation can be seen in the Prophetic era. However, as per their view, the reason is obvious, since the organ transplantation associated with the advancement of science. Accordingly, the recent progress in transplant sciences were not totally known to the classical jurists, although, issues pertaining to the sale of human organs have been discussed by them (jurists). Similarly, many other innovative matters can be seen in Prophetic traditions, and that is why, as per jurist's assertion, it can practically be traced in the Prophetic era. Consequently, this study argues that, the permissibility of organ donation and transplantation somehow mentioned in the main sources of Islamic law and biomedical ethics. Therefore, the basis and rules of permissibility will be derived while discussing organ transplantation, particularly in homo, allotransplant and other inter-related issues under the rubric of necessity doctrine.

Keywords: Organ Transplantation, Homo Transplant, Allotransplant, Auto-grafts, Allograft, Xeno-grafts, Cadaveric Organs, Organ Recipient, Objectives of *Shariah*, Organ Donation and Islamic Law

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Introduction

Indeed, Islam and other world religions have given immense attention to human's dignity, honor, and prestige whether they are alive or dead. The sanctity of human body is regarded in Islamic law,

and the desecration of human body is considered a violation suffice to a great sin. Various verses of the holy *Quran* and traditions of the holy Prophet Muhammad (peace be upon him) have evidently uttered importance and sanctity to human life.¹ Thus,

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taking one's life without a right or even inflicting any sort of harm or injury, and aggression against an individual is termed an unlawful act as prohibited. In this respect, the last sermon of the holy Prophet (peace be upon him) is worth noting, that expressly denotes sanctity of human life and dignity; "verily, your blood, property, and your honor is sacred to one another".^{2,3,4} Another Prophetic saying indicates that "breaking a dead (person's) bone is like breaking it when he is alive".^{5,6} Consequently, in this way a dead person's bones have similar sanctity as to living person, hence, the Prophet (peace be upon him) has termed its breaking equal in sin.⁷ On the other hand, organ donation and transplantation, common law generally allows almost all forms of organ transplantation, whereas Islamic law regards it, when it essentially saves one's life.⁸ Thus, this paper emphasizes the *Shariah* stand point based on comprehensive study of the maximus of necessity as applicable in organ donation and transplantation and signifying important biomedical and bioethical issue.

I- The Concept of Organ Transplantation in Islamic Law

Factually, al-Shinqīṭī contended, after a thorough investigation of the classical manuals of the Islamic law and jurisprudence convincingly mark that, classical jurists are silent on the issue of organ transplantation and tissue grafting.⁹ But, in reality, the organ re-plantation can be seen in the Prophetic era.^{10,11} However, as per his (al-Shinqīṭī) view, the reason is obvious, since the organ transplantation associated with the advancement of science, particularly in the field of biomedical technology. Subsequently, the recent innovations and developments which took place some decades before were totally unknown to those classical jurists.¹² Although, al-Shinqīṭī asserted that, issues pertaining to the sale of human organs have been discussed by them (Jurists).¹³ Nevertheless, in our humble opinion, the surgical techniques for skin, tissues and organ grafting, such as 'auto-grafting' or 'auto-transplantation' can also be seen in classical manuals.¹⁴ Moreover, many other innovations, like surgery, cutting of organs and veins can be found in Prophetic traditions, and that is why it tracing back to the Prophetic era.^{15,16,17}

Indeed, Ibn al-Qayyim maintained that numerous Prophetic traditions defining permissibility of surgery etc.¹⁸ Hence, the permissibility of organ donation and its transplantation somehow mentioned in the main sources of the Islamic law. Therefore, we need to bring some evidences from literature: allowing the

permissibility of organ donation.¹⁹ Since, we have got evidences from literatures of contemporary Muslim Scholars allowing the permissibility of organ donation. Moreover, there are also such evidence in Prophetic traditions (*hadith*). Thus, the basis and rules of permissibility will be quoted while we discuss organ transplantation, particularly in *homo transplant* (i.e. from human to human) and other inter-related issues.

II- A Brief History of Organ Transplantation

Remarkably, Albar in his research study contended that; 'Susruta Sanhit', an ancient Hindu surgeon described various methods for repairing defects of the human nose and ears through 'auto-grafts'²⁰. He further stated that; "an old Indian document written in (700-BC), described elegantly the procedure which was emulated by the Muslim surgeons and later on by the Italian Tagliacozzi,²¹ and the British surgeons working in India".²² On the other hand, the Prophet Muhammad (peace be upon him) himself replanted amputate 'eye' of Qatādah bin Nomān²³ on the day of 'Uḥud; the 'arm' of Mu'āwiz bin 'Afra²⁴, and similarly the hand of Habīb Ibn Yasāf²⁵ which were amputated (cut-off) on the day of *Badar*. Similarly, Muslim jurists permitted transplantation of bones and teeth which was practiced by eminent Muslim surgeons. The writings of classical jurists on the medical subjects illustrate that they discussed these issues in their treatises. Several other jurists of the era of 12th-14th century (AD) sanctioned 'auto-grafts', 'allograft',²⁶ and 'xeno-grafts'²⁷ surgical transplantation. Thus it shows that these techniques were practiced in some ways at that time.²⁸

III- Development of Transplant Science and Art of Tissue Grafting

As regards to the tissue²⁹grafting and its further development can evidently be seen in between 1880s and 1930s due to the rapid experiments on tissue transplantation. David Cooper in his research article stated that; 'skin grafting'³⁰started in 19th century.³¹ But 'Emerich Ullmann', who wrote his first monograph in 1914, in which he identified various types of transplantation and surgical techniques significantly shows that he has performed tissue transplantations, such as skin, testicles, and ovaries before the start of 19th century.³² Since then, similar developments took place towards the end (last quarter) of 1800. Such as, with the 'allograft'³³ techniques burn patients treated in 1870. Evidently the 'cadaver'³⁴ skin grafting treatment introduced in

1881, and since then regarded as standard solution for full thickness skin burns.³⁵

i- First Case of Kidney Transplantation (from animal to animal)

In 1902 ‘Emerich Ullmann’, a Hungarian surgeon conducted his “first kidney transplantation, in which a dog’s kidney was transplanted into another dog”.³⁶ In the same year of 1902, ‘Alexis Carrel’, a French surgeon also published his work concerning organ transplantation’s techniques.³⁷ The first ‘renal xenografting’; cross species transplantation, appeared in France in the year of 1905; “where slices of rabbit kidney inserted into a ‘nephrotomy’³⁸ in a child with renal insufficiency”.³⁹

ii- Transplantation of Pig’s Kidney into Human

In the year of 1906, ‘Mathieu Jaboulay’, another French surgeon “transplanted the left kidney of a pig into a woman suffering from ‘nephritic syndrome’;⁴⁰ however this graft failed due to early vascular thrombosis”.⁴¹

iii- Cadaveric Organs Transplantation

First renal transplant inhuman was reported in 1936 by Russian Surgeon, where’s a sixty years old deceased kidney was harvested and transplanted to 26th years old lady with end stage renal failure. Actually she made a suicide attempt via swallowing mercury; however, the transplantation was declared unsuccessful.⁴² Several attempts between 1943- 1953 remained unsuccessful till the December 23rd, 1954, ‘Joseph Marry’ and his team transplanted a kidney from living person to another living human in “Peter Bent Brigham Hospital in Boston”, USA.⁴³

On the other hand Nadey S Hakim; a writer mistakenly referred that; in January 1959, ‘Joseph Murray’ and his team conducted the first successful kidney transplantation of the world.⁴⁴ However, the interview of ‘Dr. Marry’ clearly shows that the kidney transplantation was carried out from ‘Ronald Herrick’ and implanted into his identical twin; ‘Richard’ on December 23rd, 1954.⁴⁵ Further the research article of John P. Merrill which is published in 1956; evidently stated that the first successful kidney transplantation was performed in December 23rd, 1954.⁴⁶

IV- The Case of Allo/Homo Transplant

Allo/homo transplant means transplanting organ/s from one person to another. It is a process in which an organ is taken from one person for the purpose of implantation into another person.⁴⁷ Thus, organ

transplantation and its donation stem from human to human may be divided into two types; first) the transfer of organ from living person to another living person; secondly), transfer of an organ from a cadaver to a living.

i- The Allowances and Prohibition in Transplantation

Bioethical boundaries must be observed while conducting transplant. Basically, organ transplantation and donation are permissible in Islam. This is because organ transplantation and donation fulfill the requirement in the preservation of human life, which is one of the five objectives in *maqāsid al-Shariah* (objectives of the Islamic law).

Organ transplantation is a facility made available to mankind as a means to overcome hardship faced by patients with end-stage organ failure. This is supported by the following *Quranic* verse: “Allah intends every facility for you He does not want to put you to difficulties”.⁴⁸

Similarly, Islamic law permits one who is in an urgent situation to do the unlawful (*harām*) in order to eliminate the harm, he faces, under the condition that there are no other lawful options available. As said in the holy *Quran*: “...But if one is forced by necessity without willful disobedience, nor transgressing [the] due limits—then is he guiltless. For Allah is oft-forgiving [the] most merciful”.⁴⁹ Thus, organ transplantation is an option allowed in Islamic law as an effort to save the patient’s life or improve his/her quality of life. It was also derived from the *Sunnah* of the Prophet (peace be upon him) who allowed the prohibited to improve the quality of life of his companion. The story of ‘Arfajah bin As‘ad(may Allah be pleased with him) reported by the *hadīth* books, who said: my nose was cut off on the day of (the battle of) al-Kilāb during the *Jāhilīyah*, so I had a nose made of silver, but it began to smell bad, so (the issue was brought before) the messenger of Allah (peace be upon him) who told me to get a nose made of gold.⁵⁰

ii- Living Donors: A Case of Necessity

Living donor transplantation is a popular form, whereas, an organ (paired organ) or a part of it is harvested from a live donor without compromising the quality of the life of donor and transferred to a recipient, aiming at to life saving or improve the quality of life. The basis for organ donation and its transplantation is ultimately patient’s immense need; a question of his survival to enhance the quality of

life being a useful member of the society. Usually, justification for permissibility is advanced from the , “if (مَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا) holy *Quran*; it says: anyone saved a life, it would be as if he saved the life of the all (mankind)”.⁵¹ Correspondingly, the Islamic legal maxim: “deeds are judge by their purposes and goals”,⁵² along with the rule “harm has to be redressed”,⁵³ which are based on the Prophetic traditions, signify that the theory behind organ donation and transplantation is exclusively an intention to save or improve the quality of one’s life. Thus, an intention to help others is generally regarded in Islamic law.

Further, elimination of harm and its redressal is also a justifiable ground for organ transplantation in the context of preserving one’s life, as one of the primary objectives of *Shariah*.⁵⁴ Al-Tantāwī in his legal paper quoted Jād al-Haq⁵⁵ view point on living person’s organ donation in such way that: “if an expert physician whether Muslim or non-Muslim convincingly aver that an organ from the living body with his permission—(provided that cutting/transfer part of it, or all of it, will not originally entail any harm to the donor’s health and body, since, ‘harm cannot not be eliminated by harm’⁵⁶ in Islamic law)—to transfer it to the patient’s body for the purpose of treatment, and the transfer will benefit the recipient resultantly, then such transfer is permissible in *Shariah*”. He further added that, factually Jād al-Haq considered permissibility of organ donation with the conditions that organ ‘transfer will not be effected through sale’, or any other ‘material recompense’, since, sale of person wholly or solely an organ is impermissible in *Shariah*, because the organ donor exercises a sort of legal administration over his-self within the constrain of the verses of the holy *Quran*.⁵⁷

ii.i- Donation of Sole Organ: An Intrinsic Ethical Concern

During the course of organ donation and transplantation, it must be noted that organ which is intended to be transferred from a living person to another must not be of those organs, if taken out from the living person’s body or separated will lead him towards sudden death. Such as, the heart, liver (in total), and brain etc., Thus, sole/single and likewise organs shall not be transferred/donated in any case. One life cannot be sacrificed on the expense of another life or jeopardizing health of the other.

In addition, survival of life, its preservation and protection are the ultimate goal of *Shariah*.

Therefore, it is prohibited for a person to donate such types of organ to another person, even if other person (patient) is in threatening or dying condition, or even if it is established that he will die if he does not get transplanted organ. In this case the donors under obligation to abide by the rules laid down by the holy *Quran*, as clearly stated that; “and make not your own hands contribute to (your) destruction”.⁵⁸ Another verse says: “nor kill—or destroy—yourself”.⁵⁹ Surely, thinking of that verse which says “if anyone saved a life, it would be as if he saved the life of the all (mankind)”⁶⁰ does not apply in such situation, since priority must be given to one’s own life, because “your soul has a right on you”.^{61, 62} Thus, this is a justification to reject such kinds of donation if demanded or needed, for the reason that one’s life and sound health cannot be compromised by such donations/transplantations are unethical in Islamic perspective and a Muslim physician cannot perform such transplants due to a golden rule, as harms cannot be removed by another harm,⁶³ in Islamic law.

Obviously, the above-mentioned verses and tradition emphasizes that person (donor) is under obligation to help not one another in evils, sin and transgression; rather he is required to help one another in matter of piety, virtues and righteousness. The holy *Quran* says: (وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ), “help one another in righteousness and in piety; but help not one another in sin and transgression”.⁶⁴

Consequently, surgeon/physicians and surgical staff are not allowed to perform this type of surgery. Because, by doing so their act suffices to cooperation in sin and evil. The above verse clearly indicates that their malicious act attributing to both the meanings of ‘sin’ and ‘aggression’. Thus, in this sense it is not permissible for both (the donor and physician) to perform this type of surgery,⁶⁵ as physicians are duty bound towards donor and recipient.⁶⁶

Further, the scholars of the Islamic law, those who hold the view of permissibility of human organ transplantation and donation, factually have referred to the exclusion of such organs. Hence, they said that donation of such organs which are essential for perpetuation of life is prohibited, because it involves destruction of one’s life/soul without legal rights.⁶⁷ Although organs which can be replaced, such as kidney, or when there is another alternative available, and transfer each one of the organs does not lead to donor’s death, or harm to his life, for example, transfer of skin instinct to another person, and similarly one

of the two body organs may be transferred.⁶⁸

Although, in our assessment, such decision to transfer/donate one of his organs to another person (patient) is very risky in nature, and a healthy life cannot be compromised for a patient, since it does not make any sense. Because, this is one of the donor's private self-interest, and hence a self-deciding matter, since, a human is responsible for his own organs, and will be questioned about on the day of resurrection.

ii.ii- **Opinion Regarding Organ/Tissue Donation and Transplantation: Necessary Conditions**

Literally, whatever the legal edicts say on the basis of necessity; one can judge and decided an organ donation on the basis of his own reasoning.^{69, 70} So, in my humble opinion, it is preferable to avoid such type of donations outside family; however, within a family members and blood relations, minor risk taking is logical and reasonable. Therefore, contemporary scholars of the Islamic law and jurisprudence impose important precondition to donate an organ in case the maximus of necessity apply.^{71, 72} These conditions are as follow:

First): organ donation might not harm the donor's health; it should not deteriorate the quality of the life of donor. Because a "harm cannot not be removed by harm; similar or greater",⁷³ is an established *Shariah* rule. It signifies that such donation if causing harm similar or greater in nature, the then organ donation would be considered as a suicidal act; which is strictly prohibited in Islamic law.⁷⁴

Secondly): organ donation must be voluntarily with free consent and without coercion. Any consent made under compulsion, coercion, or in result of any fear or threat to one's life or limbs will be considered an aggression as prohibited.⁷⁵

Thirdly): transplant is sole mean of provision of useful quality of life or life saving in case of transplant of vital organs; i.e. transplant is the only remedy available to treat the patient. Meaning thereby, if other alternative are available then transplantation is not a preferable method. Since, the life of a healthy person cannot be compromised mere on the basis of necessity. Because, "no harm is to be caused and none to be borne"⁷⁶ is established rule in Islamic law (*Shariah*). Further, Islamic law believes on the redressal of an injury/harm, but 'necessity/need must be determined/limited by the extent thereof'.⁷⁷ Thus, if other means are available, then "permissibility and permission based on excuses is revoked"⁷⁸

significantly indicates that principally mere excuse is not an excuse.

Fourthly): the principle of certainty states that, transplant process must be evidence based. It means that when there is certainty and enough evidences that organ donation and transplantation might restore patient's health, then it is permissible to donate an organ for transplantation. Although, organ donation is admirable and transplantation is commendable recital, however, in the best interest of the humanity, Islamic bioethics enacts these preconditions.⁷⁹

iii- **Cadaveric/Dead Donors: A Case of Necessity**

Contemporary advances in medical sciences engender fewer ethical issues in cadaveric organs harvesting than live donors of all kinds. The transfer of an organ from dead body upon his bequest during his life time may be removed for transplant. This type of transplantation is known as cadaveric.⁸⁰ In case of non-availability of the recipients, normally in some countries/states, the donated organs are taken by 'organ procurement organization' (OPO) and kept it in a 'pool' for further dispatches. For this purpose 'United network for organ sharing' (UNOS) maintains a list of the patients waiting for organ donation. The OPO upon demand or through waiting list provides organs to those patients, on the basis of waiting list data base for organ transplant.⁸¹

ii.i- **Islamic View Point on Cadaveric Donations**

On cadaveric transplant; al-Tantāwī, concludes that "procurement of an organ from a deceased to save the life of a living one is permissible".⁸² While some of the scholars consider it as a continuing charity, like, Mokhtār al-Mahdī thought that—donation of an organ after death is a—"running (everlasting) charity"*sadaqah jāriyah*. In this sense his presentation embarking that the deceased donor not only saves one person, but rather many lives; the one who needed an organ to breathe a life, while the other would be the deceased itself, because it will benefit him after death rendering his reward continuous.^{83, 84, 85}

Further, one will advance al-Nawawī's argumentation, since in his view,⁸⁶ it is permissible for *al-muḍtārr* to kill *harbī*, apostate, adulterer and the one whose killing is lawful in revenge (*qasas*), out of necessity for the purpose to satisfy his hunger;⁸⁷ equally suffices that organ of the deceased can be used in transplantation to avoid greater harm.^{88, 89} Because, where *al-muḍtārr* in case of *idtirār* is allowed to kill a person in nemesis, or those women and children

engaged in war, seems to be *ma'sūm al-ḍam* (whose blood is protected), just for the purpose to alleviate his hunger, then it is allowed to transfer an organ from the dead body for implantation, provided that the donor i.e. the deceased during his life must make a bequest for an organ donation after his death. Then definitely, organs may be transplanted to another living person waiting for a donation either to improve quality of life or to save his/her life.

Al-Qardāwī maintained that: “removing an organ from a corpse (dead body) does not violate sanctity of the deceased person, because its sanctity is preserved and has not been violated, since, the surgery which is done on cadaver is similar to the surgery of those who are alive, and that is with care, precision and respect”.⁹⁰ Fawzī argued that Muslim jurist agreed the most that getting financial and other benefits from donation of human organ: cadaveric or life is not permissible. Mean that getting benefits from human organs, whether dead or alive, is impermissible. But, at the same time the approach of Shāfi'ī jurists' towards gaining benefits from the human dead body is obvious from al-Nawāwī's description maintaining that “the inviolability of the living person is more pressing than that of the dead, and the harms ensuing from eating the dead flesh is less than those entailed by his death”.⁹¹

Although, the established analogy renders it as impermissible on the basis of human dignity, however, if anyone is forced by necessity, then it is permissible to eat from the human dead body which is less harmful (i.e. the lesser evil) for survival of his life. Therefore, Fawzī concludes that; necessity for treatment through transfer of deceased organs is equal to the necessity which renders permissible to eat from the dead flesh. Thus, transplant of an organ from the deceased to the living person seems more beneficial for the purpose of another to breathe his life, and even with more than a greater reason, because eating from dead flesh consumes the part eaten for the purpose of preservation of life. Whereas, transplantation of an organ from the dead body preserve in the living person's body, and keep it alive by providing vital organs.⁹²

Moreover, al-Tantāwī, further argues from the contemporary juristic discourse on the deceased organ donation; he stated that Islamic jurists permit the harvesting of an organ from a deceased and transplant it to living to save the life or improve the quality of life on the condition that; if a competent physician firmly asserted that it will benefit the

patient's health, keeping in view that if there is no other alternative available, provided that he should seek permission from the deceased heir(s), i.e. family members, or blood relatives.⁹³ However, if there is no heir(s), then permission should be taken from the official concerned i.e. ‘public prosecution’, government officer after taking permission for organ harvesting from the family and legal heir(s).⁹⁴

He also added that, if a competent physician believes that the patient's life is solely dependent upon the transfer of an organ from the deceased body, then in the preview of *Shariah* rule: “a greater harm can be avoided by commissioning a lesser harm”⁹⁵ i.e. the lesser evil shall be opted, signifies that permission is not binding on the competent and reliable physicians in case if there is no heirs.⁹⁶ Because, saving one's life attributed to a greater detriment which is presented in shape of severe illness and the patient is expected to perdition. Whereas the lesser harm embodied in form of removal of an organ from the deceased, thus in this sense, the lesser harm of an organ harvesting from the dead body shall be borne for the purpose to treat another living person, because, the organ transplantation procedure conduce asserted benefits to the recipient's health and life, since, his life is contingent upon it.⁹⁷ He further stated that, actually their (i.e. contemporary scholars) argumentation is based on the point that majority of jurists consider permissibility to cut the abdomen of a deceased mother, or even at the time if she is approaching to death for the purpose to bring out the prospective living offspring.⁹⁸ In the same way, it is also permissible to incise the abdomen of a person aver death for the purpose to bring out the diamonds or any other valued things that he had swallowed before his death.⁹⁹

Al-Tantāwī concludes that if transfer/donation of an organ by living person is permissible even along with the presence of an injury/harm that is likely to be inflicted to the donor's health, then we should permit transfer/donation of the deceased organs, and even with greater reason where no harm is inflicted nor expected due to organ transfer from the dead body.¹⁰⁰

V- The Issue of Organ Donation to a Non-Muslim

Normally, Muslims somehow feel uneasy while donating organs to non-Muslims and receiving from them, believing on the sanctity of organ donation to non-Muslim, since, Muslims feel that ‘religious affiliation might influence the purity of human

organs'. However, in the physical sense, human body of both (Muslims and non-Muslims), are equally pure (*tāhir*) in Islamic law.¹⁰¹ According to al-Nawawī, jurists of the Islamic law are unanimous on the purity of human body, whether Muslim or non-Muslim. But whereas the usage of Muslim organs by non-Muslim; The Islamic organization for medical sciences' of Kuwait (called Kuwait document) maintained that: "according to al-Nawawī, there are two views cited by al-Baghawī, but he endorses neither of them".^{102, 103} Thus, the Kuwait document concludes: "difference of opinion regarding usage of Muslim organs by non-Muslims", due to juristic disagreement. However, Muslim can benefit from non-Muslim organs but not vice versa, due to the jurist's disagreement.¹⁰⁴

Indeed, al-Qardāwī discussed the issue of organs donation to non-Muslims and vice versa during a symposium, on "*organ transplantation: an Islamic perspective*", he argued that organ donation is analogous to the Islamic concept of 'charity'. So, religious scholars are unanimously agreed on the point that Muslims can give charity to non-Muslims. Thus, in his view, if a charity is allowed, then, "so why not it be permissible to donate (organs) to non-Muslims, while they donate (their organs) for us?" He also argued that 'many Muslim patients have been to USA, UK, and other non-Muslim countries/states for kidney transplantation', where donation were made to them mostly by non-Muslims.^{105, 106, 107, 108}

Similar kind of sentiment expressed, by Lord Hunt; the UK health minister in 2000, that: "racism of any kind is appalling, the government is totally against any kind of conditions being attached to organ donation, since donated organs are a national resource, and are available to people regardless of race, religion, age or other circumstances".¹⁰⁹ He (al-Qardāwī) viewed especially for those Muslims who are residing in non-Muslim countries, during the course of medical treatment they are getting similar organ donation from non-Muslims. Hence, in his view, organ donation and reception should not be docketed with religion on the condition that he (non-Muslim patient) should not be a *muḥārib*; (those who engaged in war against Muslims).¹¹⁰

He, (al-Qardāwī), therefore added that 'it is prohibited to donate organs to those non-Muslim who launch an intellectual war against Muslims'. He also extends his views to those non-Muslim (apostates) who are involved, or those who aggressively working hard on their agenda against Muslims to crumble Muslim *ummah*. In such case it is not permissible for

Muslims to donate organs to the above mentioned non-Muslims.¹¹¹ As far as criterion of its distribution is concerned; the donated organs by Muslims should go; first) to their blood relatives (i.e. family members); secondly) to a non relative Muslims (i.e. closed friends, or those known to them); and thirdly) to non-Muslims'.¹¹² However, prioritization can be accepted in one or the other country based on clinical and faith requirements.

VI- If an Organ Recipient Committed a Crime or Sin

Questionably, where if an organ recipient commits any crime, or major sin/s, or any other sinful deed/s or wrongdoing/s, such as killing someone unlawfully, or committing adultery, or any other malicious act/s, then he/she (i.e. the donor) will be responsible for the action and sinful act/s committed by him or her? Noticeably, the donor might feels uneasy in this situation thinking of that he will be an accomplice in such malicious acts. However, the principal of intension applies here which clearly states that a donor did not have any intention to improve the quality of life of recipient by donating organ to him; enabling him to indulge in sleaze of any sort including disobedience to his parents, what to say about committing disobedience to Almighty Allah.

Ethically and legally a donor of an organ does not bear the responsibility of the recipient's deed in any means including offense of any sort. The Islamic ruling on such issues is very obvious. The holy *Quran* explicitly acknowledged that: *وَلَا تَكْسِبُ كُلُّ نَفْسٍ إِلَّا عَلَيْهَا*: "and no soul earns (an evil or sin) except against itself; nor does a bearer of burden bear the burden of another".¹¹³ Similarly, another verse says: *(مَنْ عَمِلْ صَالِحًا فَلِنَفْسِهِ وَمَنْ أَسَاءَ فَعَلَيْهَا)*: "who so does a good deed, does it for his own soul; and whoso does wrong, does so to its detriment".¹¹⁴ While, another verse also invoking similar kind of contention, it says: *(لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ)*: "every soul receives whatever it gains and is liable for whatever it does".¹¹⁵ Therefore, a donor is not liable legally, morally and spiritually for the deeds of the recipient of his organ. Anyhow his donation is highly valued before Almighty, depending upon his purity of intents.

VII- Opinio-Juris

Juristically, organ transplantation becomes lawful due to necessity,¹¹⁶ in Islamic law (*Shariah*). However, in normal and ordinary circumstances the standard view is basically otherwise (prohibition),

due to general rule that the donor must not be afflicted with any harm similar or greater in nature. Since, in Islamic law “a harm cannot be removed by other harm; equal or greater”.¹¹⁷ However, necessity renders transplantation and organ donation allowable and endurable.¹¹⁸

Notably, the response of contemporary Islamic scholars including Islamic *fiqh* academies, *fatāwās* (legal edicts) and *fatwá* councils pleasingly allow tissue transplantation and grafting in the best and larger human interest, provided all ethical, spiritual and legal restrictions are taken care off.¹¹⁹ Nevertheless, on the issue of sale and purchase of human body parts; majority of Islamic jurist prohibit the sale and purchase of human body parts including stem cell and surplus embryos except Ibn Qudāmah, who allow such trade. His opinion is based on the notion: (وَسَائِرُ أَجْزَاءِ الْإِنْسَانِ يَجُوزُ بَيْعُهَا، فَإِنَّهُ يَجُوزُ بَيْعُ الْعَبْدِ، وَالْأَمَةِ) ‘the sale and purchase of all human-body parts is permitted, since, sale and purchase of slaves is permissible’. This is however, a weak and exceptional opinion and cannot be quoted as general rule, although it is allowed only in case of necessity. He further stated that: (وَأَمَّا حُرْمَ بَيْعِ الْحُرِّ؛ لِأَنَّهُ لَيْسَ بِمَمْلُوكٍ) ‘even though, the sale and purchase of free men is unlawful (which suffices that the sale of their organs is also prohibited), because they cannot be owned. As they are not slaves, and therefore they are excluded from the head of sale and purchase. Moreover, the reason of prohibition of—the organs of free men—in view of Ibn Qudāmah is that: (وَحُرْمَ بَيْعِ الْعَبْدِ وَالْحُرِّ؛ لِأَنَّهُ لَا نَفْعَ فِيهِ) ‘it is not lawful because there is no benefit in it’.¹²⁰ Meaning thereby, if its benefit is established, then it can be sold and purchased. Because, the rationale of prohibition is only upon the issue of benefits, seeing at that time (classical era) it may not be deem beneficial, but today it conduces benefits to those who are waiting for such donations. Hence, in this way, the rule of permissibility will stand intact on the condition of donor’s free consent. Therefore, the donor, in case of necessity can sale and (the recipient) purchase organs with free consent without any compulsion. Conversely, since, rationally and legally the rule of prohibition is a very valid arguments of Muslim jurists against such ruling derived from the facts: slaves and their ownership which discouraged in Islamic theology as “non-can make a free person his slave” can be materialized without prejudice. Secondly, the rich can exploit poor by purchasing their organs, bodies etc., and even can forcefully

procure their organs.

Likewise, Shāfi‘ī’s and Hanbalī’s jurists consider “the sale and purchase of human organ as allowed”, while the Ḥanafī’s “allow it in case of necessity”.¹²¹ The reason of Ḥanafī’s countenance is obvious from the sale and purchase of pig’s sources, such as hair and skin cannot be sold and purchased, in their view, except for need and necessity; which renders it permissible. Ibn al-Humāmal-Ḥanafī stated: (فَلَوْ لَمْ يُوَجَدْ إِلَّا بِالشَّرَاءِ جَازَ شِرَاؤُهُ لِشُمُولِ الْحَاجَةِ إِلَيْهِ) ‘if it is not obtainable otherwise by purchase, then, it can be acquired through purchase on the basis of necessity and need’.¹²² Hence, in our understanding, same is the case with the human organs, tissues, and other living cells, keeping in view the Ḥanafī’s assertion in the sale of mother’s milk for quid pro quo or payment deeming it as a body particle (لِأَنَّهُ جُزْءُ الْإِنْسَانِ).¹²³ While the slave girl is an exception too (يَجُوزُ بَيْعُ لَبْنِ الْأَمَةِ), and allowed (for all without any exception) if it, otherwise, prove cure or for meditational purpose (وَقِيلَ بِالْجَوَازِ إِذَا عَلِمَ فِيهِ الشِّفَاءُ). Therefore, in this way, organs can also be sold and purchased on the basis of human need and necessity, provided if there is no other alternative available.¹²⁴ Meaning thereby, if a person willingly and freely wants to sale his organs to patients on payment (non-gratuitously), such shall only be acceptable in case of necessity. As, normally, human body is not a commodity, and sale and purchase of the human organs is never allowed by any Islamic scholar except in *Shariah* maximus of necessity. Resultantly, this kind of allowance is only for those (poor) who want to sale their organs to patients, in case of necessity and severs need, not only desirous to help others (patients) but rather want to testify and elevate their hunger in a lawful manner. But, interestingly, this kind of opportunity is prone to open a slippery slope for organ traders, so should be practiced with monitoring under national and international human rights authorities keeping in view the Islamic bioethical norms.

VIII- Conclusion

Resultantly, the research study clearly demonstrates that organ donation and transplantation is allowed within the strict ethical boundaries viewing the *Shariah* maximus of necessity and need, where there is no other legitimate alternative available to the patients/recipients. *Shariah* allows organ donation and transplantation within Islamic bioethical restrictions. Donation and transplantation of vital organs jeopardizing the health and life of donor is prohibited in Islamic theology. Although, it is allowed

otherwise as per *Shariah* and law after the death on bequest or in case of double organs by living in order to improve the quality of patient's life like kidney, cornea (eye), or other tissues e.g. skin, bone marrow, intestine and etc., meeting the necessity maximus requirements. However, it must be kept in mind that, mere necessity or non-necessity cases may not be considered as necessity situations in order to avert the abuse of *Shariah* doctrine of necessity. Nevertheless, certain organs or tissues though allowed in western context but not allowed due to sanctity in Islamic law like those organs or tissues carrying genetic materials.^{125,126} Therefore, both the donors and recipients/patients are required to be well aware of the rules, conditions and caveats related to organ donation and transplantation. Similarly, it is essential for them not to be considered mere necessity situations as a free license to act otherwise of the standard rules. But rather, *Shariah* doctrine of necessity and its application in organ donation, tissue grafting and organ transplantation must be correctly conceived and practiced by donors, recipients, physicians and institutions where such procedures are conducted. Islamic bioethics clearly underscored the correct understanding of all emerging situations and their resolution according to divine guidelines.

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FD perceived, conceived and designed the study, while **MMS** participated in its design and helped **FD** in critical review. **FD** solely did data collection and its analysis. **FD** did manuscript writing & drafting. **FD** did editing and incorporated reviewers suggestions. **AKA** did final review of the manuscript. **FD** takes responsibility/accountability for all aspects of work in ensuring that queries related to the integrity of the study are appropriately investigated and resolved. All the authors read and approved the study.

References:

- 1 Al Quran, chapter no. 5, verse no. 32, (مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا)
- 2 Al-Bukhārī, Ṣaḥīḥ al-Bukhārī, in book reference: book no. 25, chapter no. 132, ḥadīth no. 217, English translation: vol. no. 2, book no. 26, ḥadīth no. 795. Al-Muslim, Ṣaḥīḥ Muslim, in book reference: book no. 28 chapter no. 9, ḥadīth no. 43, English translation: book no. 16, ḥadīth no. 4161.
- 3 At-Tirmidhī, Jāmi‘at-Tirmidhī, in book reference: book no. 33, chapter no. 2, ḥadīth no. 2, English translation: vol. 4, book no. 7, ḥadīth no. 2159.
- 4 Ibn Mājah, Arabic reference: book no. 25, ḥadīth no. 3171, English reference: vol. no. 4, book no. 25, ḥadīth no. 3050.
- 5 The Prophet Muḥammad (peace be upon him) said: (كَسْرُ عَظْمِ الْمَيِّتِ كَكَسْرِ عَظْمِ الْحَيِّ) (عظم الميت ككسره حيا) AbūDāwūd, SunanAbīDāwūd, in book reference: book no. 21, chapter no. 1193, ḥadīth no. 119, English translation: book no. 20, ḥadīth no. 3201.
- 6 Ibn Mājah, Arabic reference: book no. 6, ḥadīth no. 1684, English reference: vol. no. 1, book no. 6, ḥadīth no. 1616.
- 7 It is narrated from Umm Salma’ (May Allah be please with her), that the Prophet (peace be upon him) said; (كَسْرُ عَظْمِ الْمَيِّتِ كَكَسْرِ عَظْمِ الْحَيِّ فِي الْإِثْمِ), “breaking the bones of a dead (person) is (equal) in sin, like breaking the bones of a living (person)”. Ibn Mājah, Arabic reference: book no. 6, ḥadīth no. 1685, English reference: vol. no. 1, book no. 6, ḥadīth no. 1617.
- 8 Ibn Mājah (op. cite. note 6).
- 9 Al-Shinqīṭī, Aḥkāmāl-Jirāḥahāl-TibbīyahwaĀṣār al-Mutaratībah ‘Alayhā, Maktabahāl-Ṣaḥābah, Jeddah, 1994, pp. 293-296.
- 10 The concept of transplantation of inorganic form of organs was prevailed at the time of the Prophet. E.g. the case of ‘Arfajah bin As‘ad was discussed by the author (Dr. Dayan), in which the Prophet of Islam permitted him to use gold instead of silver for missing organ. Dayan, F, the Application of Necessity in Medical Treatment: An Islamic Biomedical Perspective. Bangladesh Journal of Medical Science. 2021; 20(1):24–32. <https://doi.org/10.3329/bjms.v20i1.50341>. Fazli, Dayan, the Concept of Medical Treatment and Guidelines for Physicians in Islamic Perspective. International Research Journal on Islamic Studies. 2019; 1(2):1-19. <https://www.islamicjournals.com/the-concept-of-m...amic-perspective/>.
- 11 The hadīth books reported that a companion (‘Arfajah bin As‘ad) “whose nose was cut-off at the battle of al-Kilāb, so he got a silver nose, but it was afflicted with an infection, then issue the brought before the Prophet (peace be upon him), and he (the Prophet) ordered him to get a gold nose instead of a silver”. This shows that the concept of replacement of organs by inorganic form was practiced at the time of the Prophet. Similarly, permission of using gold to men for tying teeth and for likewise cases out of necessity, evidently demonstrates that organ replacement and surgical techniques were present in classical era. But, the concept of organic organs transplantation cannot be seen at that time. (The difference between ‘organic’ and ‘inorganic’ is that ‘organic organs’ are those organs: “which related to, or derived from, or having properties or characteristic of a living organisms” such as bodily organs, etc. Whereas ‘inorganic’ organs: “which lack the properties or characteristic of living organisms” such as metal, plastic, etc). Thus, inorganic form of organ replacement is evident in the Prophetic era, but the organic replacement had not been observed. However, Albar in his article maintained that, the Prophet Muḥammad (peace be upon him) himself replanted the amputate ‘eye’ of Qatādah bin Nomān on the day of ‘Uḥūd; and the ‘arm’ of Mu‘āwiz bin ‘Afra, and the hand of Ḥabīb ibn Yasāf which were amputated (cut off) on the day Bader. Similarly, Muslim jurists permitted transplantation of bones and teeth which was practiced by eminent Muslim surgeons. The writings of classical jurists on the medical subjects show that they discussed these issues in their treatises. Several other jurists of the era (12th-14th century AD) sanctioned ‘auto-grafts’, ‘allograft’ and ‘xenografts’ surgical transplantation. Consequently, it shows that these were practiced one way or the other at that time. Albar, Mohammed ‘Alī “Islamic Ethics of Organ Transplantation and Brain Death”, Saudi Journal of Kidney Diseases and Transplantation, 1996;7(2):109-114. G.M. Abouna (edits, et al.), Organ Transplantation 1990, Kluwer Academic Publishers, 1991, p. 574
- 12 Al-Shinqīṭī (op. cite. note 9)
- 13 Al-Shinqīṭī (op. cite. note 9)
- 14 Kasānī while discussing ‘allograft’ and ‘auto-graft’ stated that: (وَلَا إِهَانَةٌ فِي اسْتِعْمَالِ جُزْءِ نَفْسِهِ), “there is no disgraces in using (one’s) own body parts”. Kasānī, Bada’i’ al-Sana’i’ fi Tartīb al-Shara’i’, Dār al-Kutub al-Islamīyah, Beirut, 1986, vol. 5, p. 133; so, this is a clear example of skin/organ grafting. Similarly, Imām Muḥammad statement: medication through animal bones is permissible, suffices the concept of ‘xeno-graft’. For further details see the author’s upcoming study on ‘xeno-transplantation’.
- 15 Kasānī; and al-Shinqīṭī (op. cite. note 14 & 9)
- 16 Jābir (May Allah be please with him) narrated that: (عَنْ جَابِرٍ، قَالَ بَعَثَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى أَبِي بِنِ كَعْبٍ طَبِيبًا فَقَطَعَ مِنْهُ عِرْقًا ثُمَّ كَوَّاهُ عَلَيْهِ) “the Messenger of Allah (peace be upon him) sent a physician to Ubayy bin Ka’b; he (the physician) cut his vein and then cauterized it”. Al-Muslim, in book reference: book no. 39, chapter no. 26, ḥadīth no. 99, English translation: book no. 26, ḥadīth no. 5470. AbūDāwūd, in book reference: book no. 29, chapter no. 6, ḥadīth no. 10, English translation: book no. 28, ḥadīth no. 3855.
- 17 The narration of AbūHurairā (May Allah be please with him) narrated that the Prophet Muḥammad (peace be upon him) said: (اذْهَبُوا بِهِ فَاقْطَعُوهُ ثُمَّ احْسَمُوهُ) “take him (thief) away and cut off his hands and cauterize him”, evidently shows that the sealing-off wounds, incisions by burning, or freezing the blood, was practiced at that time. Bulūgh al-Marām, Arabic reference, book no. 10,

- ḥadīth no. 1235, English reference, book no. 10, ḥadīth no. 1274. ‘Aynī, Nukhbu al-Afkār fī Tanqīḥ Mabānī al-Akhbār fī Sharḥ Ma‘ānī al-Āthār, Wizārat al-Awqāf wa-Shūwoonal-Islāmīyah, Qatar, 2008, vol. 14, p. 162; Al-Shaybānī, Al-‘Asal, Dār Ibn Ḥazm, Beirut, Lebanon, 2012, vol. 7, p. 233. Al-Sarakhsī, Al-Mabsūt, Dār al-Mā‘rifa, Beirut, 1993, vol. 9, pp. 141-142; Ibn al-Humām, Fatah al-Qadir, Quetta, Maktaba, Rashidīyah, 1998, vol. 5, p. 361
- 18 Ibn al-Qayyim, the Prophetic Medicine; Al-Tibb al-Nabawī. Abd el-Qader Abd el-Azeez, Dār al-Gḥadd al-Jadeed, al-Mansūrā, Egypt, 2003, pp. 78-80; Al-Shinqīṭī (op. cite. note 9, at, p. 296).
- 19 For details see, Badawi Z. Organ transplant, Islam, Fiqh, Fatwa, Ruling, Shariah-A Jurisṭic ruling regarding organ Transplant. Islamic Voice 1998; 12(8): 140. Similarly, we may also quote a narration in which the Prophet of Allah said: وَمَنْ يَسِّرْ عَلَيَّ مُمْسِرًا فِي الدُّنْيَا يَسِّرْ اللَّهُ عَلَيَّ فِي الدُّنْيَا (وَالْآخِرَةَ) “whoever helps a brother in difficulty, Allah will help him through his difficulties on the day of judgment”. Al-Muslim, in book reference: book no. 48 chapter no. 11, ḥadīth no. 48, English translation: book no. 35, ḥadīth no. 6518. AbūDāwūd, in book reference: book no. 43, chapter no. 68, ḥadīth no. 174, English translation: book no. 42, ḥadīth no. 4928. At-Tirmidhī, in book reference: book no. 27, chapter no. 19, ḥadīth no. 36, English translation: vol. 4, book no. 1, ḥadīth no. 1930. Ibn Mājah, Arabic reference: book no. 15, ḥadīth no. 2510, English reference: vol. no. 3, book no. 15, ḥadīth no. 2417.
- 20 “‘Auto-graft’ or auto-transplant is a surgical procedure within the same species. Thus, transplantation of an organ, tissue or cell within the same species is called an ‘auto-transplant’. Meaning thereby, it is a procedure in which, an organ, tissue, or living cell is transferred from one part of body to another part within the same body is said to be an ‘auto-transplant’. E.g. “moving bone from the hip to the back to fix a broken vertebra within the same body”, such procedure is said to be ‘auto-transplant’. However, in case of skin transplant within the same body is said to be ‘auto-grafting’, or ‘auto-graft’. Because, grafting is the more common word used for the skin/tissue transplantation in biomedical context.
- 21 He was ‘Gaspere Tagliacozzi’ of Bologna, Northern Italy; a pioneer of plastic surgery, died in 1599.
- 22 Albar; and G.M. Abouna (op. cite. note 11); Bollingere R, Stickle D, “Historical aspects of transplantation”, in ‘Textbook of surgery’ (Sabiston. D. edits), Philadelphia, London WB Saunders, 1986, pp. 370-80
- 23 (عَنْ قَتَادَةَ بْنِ النُّعْمَانَ، قَالَ: أُصِيبْتُ ثُمَّ غَمَزَهَا بِرَاحَتِهِ، أَوْ يَوْمَ بَدْرٍ، فَسَالَتْ عَلَيَّ وَجَنَّتْ، فَأَرَادُوا أَنْ يَقَطَعُوهَا، ثُمَّ قَالُوا: نَأْتِي رَسُولَ اللَّهِ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ- نَسْتَشِيرُهُ، فَأَتَا النَّبِيَّ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ- فَذَكَرُوا ذَلِكَ لَهُ، قَالَ: فَوَضَعَهَا فِي مَوْضِعِهَا، ثُمَّ غَمَزَهَا بِرَاحَتِهِ، ثُمَّ قَالَ: اللَّهُمَّ اكْسِبْهُ جَمَالًا، قَالَ: (Al-Isfarāyīnī, Musnad al-ṣaḥīḥ al-Mukharraj ‘Alā Ṣaḥīḥ Muslim, Al-Jāmi‘ah al-Islāmīyah, Madīnah al-Munawarah, 2014, vol. 15, p. 15. Bahraq, Hada’iq al-Anwār wa-Matālī’ al-Asrār fī Sirat al-Nabī al-Mukhtār, Dār al-Minhāj, Jeddah, 1419.H, p. 154; Ibn Kathīr, Al-Sīrat al-Nabawīyah Min al-Bidāyah wa al-Nihāyah libn Kathīr, Dār Ma‘rifah lil-
- Tibā‘ahwa al-Nashr wa al-Tawzī, Beirut, 1976, vol. 3, p. 66.
- 24 (رَوَى ابْنُ وَهْبٍ: أَنَّ أَبَا جَهْلٍ قَطَعَ يَدَ مَعْوِذَ بْنِ عَفْرَاءَ يَوْمَ بَدْرٍ) ، فِجَاءٌ يَحْمَلُ يَدَهُ، فَيَصِقُّ عَلَيْهَا رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَالصِّقَاءُ، فَصِقَتْ) QādīIyād, Al-Shifā bi-Ta‘rīf Huqūq al-Muṣṭafā (SallāAllāh ‘Alayhiwa-Sallam), Dār al-Fihā, Oman, 1407.H, vol. 1, p. 622.
- Bahraq, (op. cite. note 23, at, p. 155)
- 25 (أَنَّ حَبِيبَ بْنَ يَسَافٍ أُصِيبَ يَوْمَ بَدْرٍ مَعَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِضَرْبَةٍ عَلَى عَاتِقِهِ (عَاتِقَهُ) حَتَّى مَالَ شِقْفَهُ، فَرَدَّهُ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَنَفَثَ عَلَيْهِ حَتَّى صَحَّ) QādīIyād (op. cite. note 24). Mullāh ‘Alī al-Qārī, Sharḥ al-Shifā lil-Qādī ‘Iyād, Dār al-Kutub al-‘Ilmīyah, Beirut, 1421.H, vol. 1, p. 658.
- 26 ‘Allograft’ is a surgical procedure in which tissues or organ transplanted from a donor of the same species but with different genetic makeup; so recipient’s immune system must be suppressed to prevent rejection of the graft. Thus in this sense, ‘allograft’ mean transfer of an organ, tissue or any other living cells from one human to another human, but not to an identical twin. While, transplantation between members/individuals of the same species that are genetically identical twin is known as an ‘isotransplant’. However, in case of skin or tissue transplantation, the word ‘iso-graft’ is commonly used for such procedures.
- 27 ‘Xeno-grafts’, mean transplantation, implantation, and infusion of an organ, tissues, or any other living cells from non-human into human. This is also called ‘xeno-transplant’. But, it must be noted that where skin or tissue transplantation taken place from one species to another unlike species, is said to be ‘xeno-graft’. While in case of organ transplantation the then procedure is called ‘xeno-transplant’. Thus in this sense, ‘xeno-grafting’ or ‘xeno-transplantation’ commonly refers to the transfer of non-human (i.e. animals) organs, tissues, or any other living cells into the human body.
- 28 Albar (op. cite. note 11; and G.M. Abouna, at, p. 296)
- 29 E.g. ‘thyroid’, ‘parathyroid’, ‘testicles’, ‘ovary’, ‘adrenals’, and etc. Druml W, “The beginning of organ transplantation: Emerich Ullmann (1861-1937)”, *Wiener Klinische Wochenschrift*, 2002, 114(4): 128-37.
- 30 Skin grafting means: “the process of removing skin/tissue from one part of a person’s body (or another person’s living or dead body), and then surgically re-transplantation for the purpose to replace the damaged/burn tissue”. Skin grafting is different from transplantation because it does not remove and replace an entire organ, rather required portion from the host body or from the body of other than the patient”. See “Ethics of organ transplantation”, Center for Bioethics, 2004, pp. 4-6.
- 31 David K. C. Cooper, “A brief history of cross-species organ transplantation”, Proceedings: Baylor University of Medical Center, 2012, 25(1): 49-57.
- 32 Druml W (op. cite. note 29).
- 33 Mean “tissue or organ transplanted from a donor of the same species but with different genetic makeup; recipient’s immune system must be suppressed to prevent rejection of the graft”.
- 34 Mean “the dead body of a human being”.
- 35 Nadey S Hakim (edits), Introduction to Organ Trans-

- 82 Al-Tantāwī (op. cite. note 57)
- 83 Al-MahdīMokhtār (op. cite. note 69)
- 84 Similar contention is expressed by Albar. Albar (op. cite. note 11)
- 85 DariuschAtighetchi, *Islamic bioethics: problems and perspectives*, Second University, Naples, Italy, 2007, p. 166
- 86 (وَيَجُوزُ لَهُ قَتْلُ الْحَرَبِيِّ وَالْمُرْتَدِّ وَأَكْلُهُمَا بِلَا خِلَافٍ) Al-Nawawī, *Al-Majmū‘*, vol. 9, p. 44
- 87 Al-Nawawī maintained that: (فَيَجُوزُ لِلْمُضْطَرِّ قَتْلُ الْحَرَبِيِّ وَالْمُرْتَدِّ: وَتَارِكُ الصَّلَاةِ عَلَى وَأَكْلُهُ قَطْعًا. وَكَذَا الرَّأْيِيُّ الْمُخْصَنُ، وَالْمُخَارِبُ، وَتَارِكُ الصَّلَاةِ عَلَى الْأَصْحَ فِيهِمْ. وَلَوْ كَانَ لَهُ قِصَاصٌ عَلَى غَيْرِهِ، وَوَجَدَهُ فِي حَالَةِ اضْطِرَارٍ، فَلَهُ قَتْلُهُ قِصَاصًا وَأَكْلُهُ) See, Al-Nawawī, *Rawḍat al-Tālibīn*—*Umdat al-Muḥtāḥ*, Al-Maktab al-Islāmī, Beirut, 1991, vol. 3, p. 284. See also, Al-Anṣārī, Ghurar al-Bahīyah fi Sharḥ al-Bahjah al-Wardīyah (lil-Ibn al-Wardī), *Dār al-Kutub al-‘Ilmīyah*, 1997, vol. 5, p. 178
- 88 Al-Shinqīṭī (op. cite. note 9, at. pp. 380-381)
- 89 In view of al-Qazwīnī, it is lawful to kill those who engage in war against Muslims, the apostate, the adulterous, etc. for the purpose to alleviate his hunger. Al-Qazwīnī, *Al-‘Aziz bi-Sharḥ al-Wajiz*, known as, *Al-Sharḥ al-Kabīr*, *Dār al-Kutub al-‘Ilmīyah*, Beirut, 1997, vol. 1, p. 85.
- 90 Al-Qardāwī, Yūsuf Abdallāhal-Qardāwī, *FatāwāM‘āṣira*, Mansrūra, *Dār al-Wafā*, 1994, vol. 3, pp. 365-366; see also, “Organ Transplant in Islam: the Fiqh of organ transplant and its application in Singapore”, ‘Office of the Mufti Strategic Unit, *Majlis Ugama Islam Singapura*’, 2007, p. 57
- 91 Fawzī, MuḥammadFaidullāh, “Disposal of human organs”, Legal paper presented to the third symposium on Medical jurisprudence, by ‘Islamic Organization for Medical Sciences’, Kuwait, April 18th-21st, 1987.
- 92 Fawzī (op. cite. note 91)
- 93 Al-Tantāwī (op. cite. note 57)
- 94 Al-Tantāwī (op. cite. note 57)
- 95 Al-Majallah (op. cite. note 52, article no. 27, at. p. 19; and Fazli, Dayan, at. p. 216, 277)
- 96 Al-Tantāwī (op. cite. note 57)
- 97 Al-Tantāwī (op. cite. note 57)
- 98 Al-Tantāwī (op. cite. note 57)
- 99 Al-Tantāwī (op. cite. note 57)
- 100 Al-Tantāwī (op. cite. note 57)
- 101 According to ‘Abdullah al-Basam, the body of human beings are pure whether Muslim or non-Muslim. DariuschAtighetchi (op. cite. note 85, at. pp. 164-168). See also (infra. note 102 & 104).
- 102 IOMS, “Donated organs and Donors: In Organ transplantation from an Islamic perspective”, ‘Islamic Organization for Medical Sciences’, Kuwait.
- 103 IOMS (op. cite. note 102)
- 104 Mohammed Ghaly, “Religio-ethical discussions on organ donation among Muslims in Europe: an example of transnational Islamic bioethics”, *Medical Health Care and Philosophy*, 2012, 15:207–220.
- 105 Al-Qardāwī, Yūsuf Abdallāhal-Qardāwī, *Zirā‘at al-A‘dāfiDaw’ al-Sharī‘ah al-Islāmīyah*, *Dār al-Shurūq*, Cairo, 2010, pp. 48-49
- 106 IOMS, proceeding of symposium, on “Organ transplantation: an Islamic perspective”, held in ‘Islamic Organization for Medical Sciences’, Kuwait, during the period: October 23rd–26th, 1989.
- 107 Mohammed Ghaly (op. cite. note 104)
- 108 DariuschAtighetchi (op. cite. note 85, at. pp. 164-167)
- 109 The Guardian, “Transplant chief loses job over racism row”, by Sarah Boseley, (health correspondent), February 23rd 2000, available at: <https://www.theguardian.com/uk/2000/feb/23/race.world1>.
- 110 Al-Qardāwī, IOMS, Mohammed Ghaly, and DariuschAtighetchi (op. cite. note 105, 106, 104, 108)
- 111 Op. cite. note 110
- 112 Op. cite. note 110
- 113 Al Quran, chapter no. 6, verse no. 164. The reason is obvious, as the said verse indicates invalidity of the assumptions of those who said: children are being punished with the disbelief of their fathers, such as Jews. (الْأَيَّةُ) *Al-Rāzī*, *Tafsīr al-Kabīr*, al-Maṭaba‘ahal-Bahīyahal-Miṣrīyah, Miṣr, vol. 4, p. 68; Similarly, it expresses that: (وَفِيهِ رَدٌّ لِمَا كَانَتْ عَلَيْهِ الْجَاهِلِيَّةُ مِنْ مُوَاخَذَةِ الْقَرِيبِ بِذَنْبِ قَرِيبِهِ، وَالْوَاحِدِ مِنَ الْقَبِيلَةِ بِذَنْبِ الْآخَرِ) ‘relative will be held liable for the guilt of his relative, and even one of the tribe will be considered guilty for the deeds committed by other’. *Al-Shawkānī*, *Faṭḥ-ūlQadīr*, *Dār Ibn Kathīr*, Damascus, Beirut, 1414.H, vol. 2, p. 212; *Al-Māwardī* said: (معصيتها: يعني إلا عليها عقاب معصيتها، ولا يتحمل أحد ذنب غيره فيأثم به ويعاقب عليه، ولا لها ثواب طاعتها، ولا يتحمل ذنبه غيره، فيبيرا منه ويسلم من عقابه) ‘that every soul will be punished for the sin he committed, and will be rewarded for his obedience, so no one can bear the sin of another, and will be punished and will not be held liable for any other’s sin’. *Al-Māwardī*, *Tafsīr al-Māwardī*, *Dār al-Kutub al-‘Ilmīyah*, Beirut, Lebanon, vol. 2, p. 196; *Al-Ṭabarī* maintained that everyone will be held liable for their own actions and sins; (ولا تأثم نفس أئمة باتم نفس أخرى غيرها، ولكنها تأثم باتمها، وعليه تعاقب، دون أثم أخرى غيرها) *Al-Ṭabarī*, *Tafsīral-Ṭabarī*; *Jāmi‘al-bayān ‘an ta’wīlay al-Qur’ān*, *Dār al-Mā’rifa*, Beirut, 1972, vol. 10, p. 48, and, vol. 12, p. 286; *Al-Samarqandī*, *al-Ḥanafī* commented that; ‘no soul will carry misdeed/mistake of others’ (لا تحمل نفس خطيئة نفس أخرى). *Al-Samarqandī*, *al-Ḥanafī*, *Bahr-‘ul-Ulūm*, *Dār al-Kutub al-Islāmīyah*, Beirut, 2006, vol. 1, p. 500; since, it is injustice, hence, no one will become an accomplice of others sin; see, *Ibn Kathīr*, *Tafsīr al-Qur’ān al-‘Azīm*, *DārṬaybahlil-Nashrwa al-Tawzī‘*, 1999, vol. 3, p. 344. So, everyone will be responsible for their own actions. And ‘no one will become guilty for the sin committed by others’, (لا يؤاخذُ) ‘no one will be punished for the guilt of others’, (لا يُؤَاخَذُ) see, *Al-Baghawī*, (*Tafsīr al-Baghawī*, known as *ma‘ālim al-tanzīl fi Tasīr al-Quran*, *DārIḥy ā’ Al-Turāth al-‘Arabī*, Beirut, 1420.H, vol. 3, p. 212
- 114 Al Quran, chapter no. 45, verse no. 15; and chapter no. 41, verse no. 46
- 115 Al Quran, chapter no. 2, verse no. 286.
- 116 For the core concept of necessity, see, Fazli, Dayan, (PhD Thesis), *The Application of Doctrine of Necessity*

in Shariah and Contemporary Medical Issues with Special Reference to Family Matters and Pakistani Law, IIU, Islamabad, 2018.

117 Al-Majallah; and Fazli, Dayan (op. cite. note 56)

118 For details, see (op. cite. note 10, 11, 48, 49, 50, 116 & infra note 121, 123)

119 Juristic Decisions on some Contemporary Issues, Islamic Fiqh Academy, New Delhi, India, 2014, pp. 255-257. Contemporary Medical Issues in Islamic Jurisprudence, Islamic Fiqh Academy, New Delhi, India, 2001, pp. 21-72. See, proceeding of the seminar on: "Forbidden and unclean ingredients or Substances in Food Stuffs and Medicine", held in 'Islamic Organization for Medical Sciences, Kuwait, May 22-24th 1995; (op. cite. note 11, 57, 69, 71, 90, 91, 102, 105 & 106).

120 Ibn Qudāmah, Al-Mughnī, Dār al-Fikr, Beirut, 1985, vol. 4, p. 196, and vol. 6, p. 364

121 Qaiser Shahzad, Biomedical Ethics: Philosophical and Islamic Perspectives, IRI, IIU, Islamabad, Pakistan, 2009, p. 242

122 Ibn al-Humām (op. cite. note 17, vol. 6, p. 425)

123 Ḥanafī's consider mother's milk as a body part or particle, and thus deem its sale as prohibited (لَمْ يَجُزْ بَيْعُ لَبَنِ الْمَرْأَةِ) (لأنَّهُ جُزْءُ الْأَدْمِيِّ), because of the sanctity. Although, considering mother's milk as a body part, the Ḥanafī's tolerate its sale and purchase out of necessity and need. Nevertheless, among the Ḥanafī's, Abu Yusuf draw a distinction between the odalisque and rest liberate women, as he asserted permissibility for a maidservant that she can sell her milk (وَعَنْ أَبِي يُوسُفَ يَجُوزُ بَيْعُ لَبَنِ الْأَمَةِ). Moreover, Ibn al-Humām viewing the sale of mother's milk permissible for meditational purpose, while some legal edits stated permissibility if proven cure without availability

of other alternative (وَقِيلَ بِالْجَوَازِ إِذَا عَلِمَ فِيهِ الشِّفَاءُ هَكَذَا نَقَلَهُ فِي) فَتَحَ الْقَدِيرِ هُنَا.....وَاخْتَارَ فِي الْخَانِيَّةِ وَالنَّهَائِيَةِ الْجَوَازَ إِذَا عَلِمَ أَنَّ فِيهِ الشِّفَاءَ، (وَلَمْ يَجِدْ دَوَاءً غَيْرَهُ). Ibn al-Humām (op. cite note 112); see also, Ibn Nujaym, al-Akbar, Al-Baḥr al-Rā'iq; SharḥKanz al-Daqa'iq, wa-Miḥnat al-Khāliq, Dār al-Kutub al-Islāmī, (n.d), vol. 6, p. 87. Ibn Nujaym, al-Aṣghar Al-Nahr al-Faāiq; SharḥKanz al-Daqa'iq, (li-Hāfīz al-Dīn al-Nasafī), Dār al-Kutub al-Islāmīyah, Beirut, 2002, vol. 3, p. 427. Consequently, in our understanding, the Ḥanafī methodology will attract the rule of permissibility for organ donation and transplantation on the basis that, first: if the sale of mother's milk as a body particle is allowed in case of necessity and need; secondly) the slave girl milk was an exception too; and thirdly) if the mother's milk, otherwise, establish cure, then the same assertion analogically be extended to the rest of body parts i.e. organs. Resultantly, the Ḥanafī's holds permissibility for organ's donation and transplantation.

124 Op. cite. note 11, 57, 66, 71, 90, 91, 102, 105, 106&119.

125 Dayan, F, CRISPR Cas-9 genome editing and Islam: A religious perspective. *Bangladesh Journal of Medical Science*. 2019;**18**(1):7-13. DOI: <https://www.banglajol.info/index.php/BJMS/article/view/39540>.

126 Dayan, F, Ethico-legal aspects of CRISPR Cas-9 genome editing: A balanced approach. *Bangladesh Journal of Medical Science*. 2020;**19**(1):11–16. DOI: <https://www.banglajol.info/index.php/BJMS/article/view/43869>.