

Property and Ownership of Organs and Parts of the Human Body and its Effect on the Level of Responsibility of the Medical Team of the Organ Transplant Surgeon from the Point of View of Jurisprudence and Law

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Abstract:

Introduction & Objective: The progress of science and the expansion of social relations and the needs of the society have introduced new concepts and issues in the field of legal science, which law must examine and provide appropriate answers to. For a long time, what could be the subject of the contract and agreed upon by the parties were material objects or some financial rights. But nowadays, sometimes the organs and parts of the human body are also subject to agreement and ultimately transfer. This question has been occupying the minds of jurists and jurists, whether the parts or parts of the human body have all the conditions of material objects, including property, for the transaction to take place or not? The answer to this question, in addition to having a significant effect on the validity or invalidity of human body organ transplantation and its transplantation, is also effective on the level of responsibility of the surgeons of the organ transplant team.

Materials & Methods: This article uses the descriptive-analytical method. In this way, all the available sources were studied and scanned and used in different parts of the article.

Results: The result of this article is that: despite the existing differences of opinion regarding the property and ownership of human body parts and organs, one can at least give a positive opinion regarding the existence of their potential property. This means that human body parts and parts have potential property as long as they are connected and part of the body and cannot be the object of transaction, but when the part is separated or the part is removed from the body, their potential property becomes actual and an obstacle to the object of transaction. They do not exist. Man's relationship with his body parts is inherent ownership or at least dominion and possession, which is sufficient for the validity of transfer.

Conclusions: The results showed that: although there is currently no legal provision regarding the transfer of organs from a living person to another living person, but the approval of the single article of the law on organ transplantation from deceased patients or patients whose brain death is confirmed It has answered some of the existing ambiguities and solved some of the daily needs of the society. Considering that the transfer of organs is allowed under the condition of the will of the deceased or the consent of the heirs in cases of necessity, it can be said that the ownership of body parts and at least the dominion of man over his body parts is accepted, because the premise and condition of the validity of the transfer of human body parts and organs is accepted. It is their property, and the fact that a person can make a will regarding his body parts is based on his dominion over his body parts, and the heirs, acting on his behalf, can allow the removal of organs from the deceased for transplantation after his death.

Key Words: *Property and Ownership, Body Parts, Responsibility of the Medical Team, Jurisprudence, Subject Rights*

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Background and Objective

The examination of human history elucidates a fundamental truth: humanity has consistently exhibited an intrinsic impetus to ensure its own preservation and to safeguard those within its vicinity, often placing survival above the welfare of others. As advancements in science and technology have unfolded, this drive has undergone significant transformation, particularly in the domain of medicine. Researchers and scientists have achieved remarkable progress in the development of medications and innovative, effective treatments for various diseases that were once regarded as untreatable, ultimately saving millions of lives and rekindling hope among countless patients. Nevertheless, considerable challenges persist, as certain diseases and conditions continue to elude effective treatment. In contemporary times, individuals confronted with life-threatening illnesses may seek intervention through organ transplantation, a procedure that depends on the donation of organs or bodily parts from others. This medical advancement can serve as a pivotal factor distinguishing between life and premature death for numerous patients. To fully leverage these advancements, it is essential for medical science to engage in collaboration with other disciplines, including legal frameworks, to address critical inquiries regarding the legality of organ donation, removal, and transplantation. This is particularly salient in Iran, where legal structures are intricately linked with Islamic jurisprudence.

As scientific knowledge progresses at an unprecedented rate, it is imperative that jurisprudence and Islamic law evolve to accommodate contemporary societal needs, thereby providing relevant legal frameworks for emerging issues. Specifically, the transfer of human organs and bodily parts presents significant legal and ethical questions that have long been the subject of discourse among jurists and legal scholars. Ideally, the legal transfer of human organs should transpire within the context of contractual agreements, with three primary modalities identified: sale, bequest, and gift. Thus, what insights do Islamic law and contemporary legal systems offer regarding this matter? Is it permissible for individuals to designate their organs or bodily parts as subjects of these contracts?

A central issue that has persistently drawn the attention of jurists—and one that considerably influences the validity and integrity of contracts

governing organ transfer—concerns the financial valuation of human organs and bodily parts. Should these entities be classified as property? What is the nature of an individual's relationship with their own bodily parts? Does an individual possess ownership over their own body? The answers to these inquiries, whether affirmative or negative, will have profound implications for the legality of organ transfers and the extent of civil liability for the surgical teams involved in transplantation procedures.

Background of the Research

The financial valuation and ownership of human organs and body parts represent underexplored topics within the domains of jurisprudence and law, particularly concerning the implications of the Organ Transplantation Law and its effects on the civil liability of surgical teams engaged in transplantation procedures. Although various authors have touched upon these issues in their writings regarding property rights, ownership, and organ transplantation, there exists a significant paucity of comprehensive scholarly work specifically addressing the intersection of these topics. Separate discourses have been conducted concerning the financial valuation of human body parts and the practice of organ transplantation; however, no dedicated studies have investigated how the financial valuation of human organs influences the civil liability of surgical teams involved in transplantation, thereby highlighting a critical gap in the existing literature.

Noteworthy contributions to this field include Ismail Aqababayi's work, "Organ Transplantation from Deceased and Brain-Dead Patients: A Jurisprudential and Legal Study", which examines the legal provisions surrounding organ transplantation from deceased individuals and brain-dead patients, along with insights into physician liability regarding blood money (*diyeh*).³¹ Dr. Saeed Nazari Tavakoli's book, "Organ Transplantation in Islamic Jurisprudence", offers a jurisprudential perspective on the subject of organ transplantation; however, it does not explore the financial valuation or ownership of human body parts, nor does it address the civil liability of surgical teams involved in transplantation procedures.²⁴

Similarly, in the work "Brain Death and Organ Transplantation from the Perspectives of

Jurisprudence and Law", Hossein Habibi examines the concepts of brain death and the transplantation of organs from brain-dead patients and deceased individuals within both domestic and comparative legal contexts. Nevertheless, he does not directly engage with the specific issue at hand.³⁰

Additionally, esteemed legal scholars such as Dr. Katoozian and several prominent jurists, including Ayatollah Khomeini, have made brief mentions of the application of property concepts to human organs and body parts.

Lexical, Terminological and Conceptual Definitions of Property

Lexical Definition

An examination of various dictionaries reveals that the term "property" encompasses multiple meanings. For the purposes of this discussion, we will focus specifically on the definition that pertains to our topic. Dr. Moein defines property as "that which belongs to someone; that which has exchange value."

Terminological Definition

Terminological definitions arise from the particular contexts and discourses of various fields, extending beyond the confines of dictionary definitions. These definitions encapsulate the perspectives of prominent figures within each discipline and are recognized as the foundational "doctrine" of that field.

To establish a basis for our discussion, we will first explore definitions of property as articulated by legal scholars and subsequently consider the viewpoints of both Imami and Sunni jurists.

- Dr. Langroodi, in his work *Terminology of Law*, defines property as "something that has economic value and can be evaluated in monetary terms."²

- Dr. Katoozian further elaborates, asserting that "Legally, something qualifies as property if it meets two essential conditions: 1) It must be beneficial, satisfying a need—whether that need is material or spiritual; 2) It must be capable of being allocated to a specific individual or community."³

- Dr. Shahidi concurs, emphasizing that property is characterized by its possession of economic value.⁴

From the collective insights of these definitions, it can be concluded that an object is regarded as property if it provides benefits to individuals, fulfills material or spiritual needs, and possesses a market

value substantiated by the willingness of individuals to pay for it.

Juridical Definitions

Ayatollah Khomeini defines property as "that which is given in exchange and is generally desired."⁵

In a similar vein, Al-Hurr al-Amili states, "Property is defined as that which is exchanged for something of value."⁶

Imam Khomeini (RA) articulates that "Property refers only to that which is sought after and desired by rational individuals, for which a price is paid in exchange."⁷

Within the Sunni tradition, Mohammad Youssef Moussa defines property as "anything that a person can own and from which they can typically derive benefit."⁸

Furthermore, Mohammad Ali Othman insists that individuals must be authorized by Sharia to utilize such property.⁹

Concept of Human Body Parts & Organs

The human body is composed of both individual and paired parts, as well as various components and organs. The term "limbs" typically refers to singular or paired body parts that are non-regenerative, such as hands, feet, and ears. These may be categorized as either vital—essential for sustaining life, such as the heart—or non-vital, such as the ears, which are not critical for survival. Conversely, "components" denote parts of the body that are produced internally and possess the capacity to regenerate, including blood, bone marrow, semen, skin, hair, and nails. It is pertinent to highlight that human body parts are formed at birth and do not regenerate thereafter; for instance, if a hand or foot is severed, it will not be reconstructed. However, the body continuously produces blood and can regenerate skin in response to injury.¹⁰

The Impact of the Value and Ownership of Human Body Parts on the Responsibility of Medical Teams Performing Organ Transplants: Perspectives from Jurisprudence and Law

A scholarly consensus regarding the value of human body parts remains elusive. This ambiguity arises from differing interpretations of the term "property." These varying perspectives directly influence conclusions regarding the status of human body parts. Some scholars contend that

human body parts cannot be regarded as property and thus lack inherent value. Conversely, others argue for their possession of value. The position one adopts—whether viewing body parts as valuable or otherwise—significantly impacts the legality of organ transfer. If body parts are deemed valuable, the transfer is considered valid; however, if they do not qualify as property, the transaction is rendered void due to the absence of value in the subject matter. In this context, Shia and Sunni scholars exhibit divergent viewpoints.

Among Sunni scholars, a prevalent belief exists that human body parts lack value and cannot be treated as property, based on the conviction that the human body is sacred and dignified. Consequently, discussions regarding the transfer of human body parts are profoundly influenced by these theological and legal interpretations.¹¹

Mohammad Ali Al-Bar, a prominent Sunni jurist, posits that individuals facing dire circumstances are permitted to utilize the body parts of deceased individuals. While he acknowledges that such usage is permissible under these specific conditions, he emphasizes that this does not imply an acceptance of the inherent value of human body parts. Rather, the allowance is strictly contingent upon the necessity of the situation.¹²

A majority of Sunni scholars echo this sentiment, asserting that human body parts possess no intrinsic value and are only permissible for use in times of necessity.

This principle emerges from a profound respect for human sanctity and dignity, prompting scholars to refrain from distinguishing between a living body, a corpse, or connected versus detached body parts.

Ahmad Sharaf al-Din asserts that the consensus among Sunni scholars is that the inherent nature of the human body precludes its classification as property. Consequently, detached body parts are similarly regarded as not constituting property.¹³

While nearly all Sunni scholars reject the validity of transferring human body parts based on their belief that these parts lack intrinsic value, they permit compensation in cases of dire necessity, provided that such compensation represents the sole means of acquiring the organ. Nevertheless, they consider the act of receiving payment for such body parts to be morally objectionable.¹⁴

Upon examining the perspectives of Sunni scholars regarding the definition of property, it becomes evident that an item is deemed property if it can be owned, utilized, and permitted for use under Sharia law. Applying this definition to human body parts—

whether living or deceased, attached or detached—indicates that they cannot be subjects of commercial transactions.

Legally, the debate surrounding the value and ownership of human body parts features both proponents and opponents. A comprehensive analysis of the arguments supporting and opposing the valuation of human body parts is a complex topic that merits separate discourse. However, to summarize the prevailing thoughts articulated in the writings of legal scholars, it can be stated that human body parts exhibit characteristics akin to property, as they fulfill various human needs, possess utility, and can be exchanged for monetary compensation, thereby holding considerable value, even to the extent of potentially saving a life. Nevertheless, their value is considered potential. As long as human body parts remain attached and recognized as part of the body, their value remains latent, rendering them unsuitable for transactions. Conversely, once detached, their potential value becomes actualized, allowing them to be the subject of contracts, such as sales, gifts, and wills.

One of the fundamental conditions for the formation of contracts is the existence of value, transferability, and rational and lawful benefits associated with the property in question. This principle has engendered considerable debate regarding human body parts.

Dr. Shahidi asserts that transactions involving materials derived from the human body—such as blood, hair, and breast milk—are deemed valid, provided that their detachment does not result in harm or impair health. This is attributable to their established economic value and status as property, along with the presence of rational and lawful benefits, and the absence of any legal or religious prohibitions against their transfer and trade. Furthermore, from a jurisprudential standpoint, the transaction of certain components, particularly human breast milk, is recognized as valid...

Consequently, whenever these items confer rational and lawful benefits, they may be subjected to transactions.

While religious and legal teachings have generated significant opposition to the ownership of deceased body parts—due to the application of the same rulings that pertain to corpses and carrion—it is imperative not to overlook the potential life-saving value of harvestable and transplantable body parts. As a result, the harvesting and transplantation of organs from deceased individuals or those who have been confirmed as brain dead is permitted. In

2000, Iranian legislators enacted a specific article addressing this issue, which will be examined in due course.

It is generally accepted that transactions involving non-harvestable or non-transplantable body parts of the deceased are impermissible, and the rulings concerning the violation of corpses apply. Heirs are prohibited from rendering non-transplantable body parts of the deceased the subject of any transaction, nor may medical professionals separate such parts from the deceased's body.

For an object to qualify as property, it must possess both the capacity to provide benefit and the ability to be transferred. The first element is particularly pertinent when considering human organs and body parts in contemporary society, where scientific advancements have rendered organ donation and transplantation vital for the treatment of certain conditions, potentially saving lives. Given that artificial organs, which sometimes serve as substitutes for natural body parts, often fall short in terms of quality and functionality, and may entail higher costs, while certain artificial replacements for specific body parts are still under development, it is difficult to overlook the advantages associated with human organs and body parts.

Today, organ transfer and transplantation represent some of the most effective—and, in certain instances, the last resort—methods for treating severe illnesses. When conducted appropriately, these procedures can yield significant benefits not only for the recipient but also, in certain cases, for the donor. For example, blood donation can provide numerous advantages for the donor as well.

The transplantation of organs—including kidneys, hearts, corneas, skin, and stem cells—along with advancements in cloning, has significantly enhanced the quality of life for numerous patients and addressed critical medical needs, thereby saving countless lives.

It is imperative to acknowledge that the human body as an entirety cannot be equated with the notion of property. While the organs and tissues remain attached to an individual, they cannot be classified as property nor be subjected to contracts or agreements. However, upon the detachment of an organ or bodily part, it acquires an independent status and can be designated as property. An examination of the theory concerning the potential property status of human body parts elucidates this distinction.

The potential value of human body parts

According to this theory, organs and parts of the human body are not regarded as property as long as they are connected to the whole person; they attain property status only after separation and when prepared for transfer to a recipient in need. In this context, they are considered "actual property." Proponents of this theory contend that recognizing body parts as property while still attached to the body would imply that all individuals possess the capacity and wealth to fulfill religious obligations, such as pilgrimage (Hajj), thereby rendering claims of insolvency untenable. Accepting the potential property status of human body parts enables us to regard them as actual and transferable property solely after their removal from the body.

This perspective bears significant practical implications and aligns with established legal principles. Classifying body parts as actual property prior to separation presents myriad questions and ambiguities that are difficult to resolve. For instance, recognizing human body parts as property before separation could complicate issues related to bankruptcy for merchants, insolvency for non-merchant debtors, inheritance matters for the deceased, taxation, classification of body parts as dowries, enforcement of claims, asset seizure, and implications for crimes and punishments, among other legal considerations.

The acceptance of the theory regarding the property status of human body parts is particularly significant for its implications concerning the civil liability of transplant medical teams. Typically, civil liability for the medical team does not arise as long as surgical procedures are performed on organs that remain attached to the patient's body for therapeutic purposes.

In addressing the complexities and ambiguities associated with these issues, adopting the theory of potential property status for human body parts may provide a viable solution.¹⁵

It is crucial to recognize that the reluctance among jurists and legal scholars to embrace this property status largely arises from concerns regarding the implications for human dignity and respect. However, we must not overlook the logical and rational needs of society, which can yield substantial benefits, merely to avoid potential negative consequences. Rejecting these advancements risks depriving society of the fruits

of scientific progress that have emerged from years of rigorous research and inquiry.

The Impact of Recognizing Body Parts as Property on the Civil Liability of Transplant Surgeons

Iranian law functions within a codified legal framework, wherein statutes are the primary source of legal authority. Notably, legislation concerning the extraction of organs from deceased individuals and those diagnosed with brain death was enacted in 1999, with its executive regulations subsequently approved in 2002.

The consideration of organs and parts of the human body as property raises pertinent questions regarding the influence of such recognition on the civil liability of the transplant surgical team.

In this context, it is essential to reference Note 3 of the aforementioned law on organ transplantation. This provision explicitly stipulates that the transplant surgical team bears no liability for compensation related to injuries sustained by the patient's body during the transplantation process. This exemption implies that the medical team is not held financially accountable for any harm that may arise during the procedure. However, complications emerge in scenarios where transplantation becomes unfeasible due to medical negligence, resulting in the organ's loss of viability for transfer. In such instances, the law fails to specify the parameters of the physician's responsibility or the criteria for assessing the civil liability of the transplant medical team. Consequently, it is imperative to reference general principles of civil liability to adequately address these concerns. In conclusion, a meticulous examination of the property status of human body parts is essential, not solely for the sake of legal clarity, but also to ensure that advancements in medical science can be effectively integrated into a framework that upholds human dignity while promoting societal benefits.

The recognition of human organs and body parts as property carries significant implications, particularly concerning civil liability for medical teams in instances of transplantation failure attributable to medical negligence. This relationship highlights the necessity for members of the transplant surgical team to obtain not only informed consent but also a release document from patients or their families. Nonetheless, it is crucial to acknowledge that the acquisition of such a

release does not absolve physicians of responsibility in cases of negligence.¹⁶

In essence, for any impairment or destruction of a body part to be deemed harmful, said body part must first possess property status, thereby facilitating discussions surrounding civil liability and compensation for damages. The elements of civil liability typically encompass the occurrence of a harmful act, the realization of damage, and a causal link between the harmful act and the resultant damage. Therefore, if we dismiss the notion of human body parts as property and fail to assign them economic value, the concept of harm is effectively invalidated. In such scenarios, the transplant surgical team would not incur civil liability, as one of the fundamental elements requisite for establishing liability would be absent.

Once we accept the potential property status of human organs and body parts, it becomes essential to elucidate the nature of the relationship individuals have with their body parts. Do individuals genuinely possess ownership of their organs and body parts? Are they capable of exercising control over these properties, or do we attribute ownership to a divine or higher power, thereby reducing a person's relationship with their body parts to a custodial role that permits their utilization and development? Furthermore, do other individuals possess any rights over a person's body parts?

Addressing these inquiries necessitates a comprehensive understanding of the concept, nature, and characteristics of ownership.

Ownership According to Jurists

The concept of ownership has garnered various interpretations among jurists.

Mohammad Kazem Khorasani defines ownership as "the exclusivity of a thing to another,"¹⁷

while the late Irawani emphasizes "the recognition of the owner's authority over what is owned."¹⁸

Ayatollah Rouhani introduces the dimension of comprehensiveness into the essence of ownership.¹⁹

Among scholars within the broader Sunni tradition, Ibn Taymiyyah asserts that ownership represents the permission granted by Sharia to take possession of a particular entity,²⁰

whereas Ibn Abidin describes ownership as the capacity to possess something in an exclusive manner.²¹

a- Levels of Ownership in Imami Jurisprudence
Imami jurists delineate several levels of ownership, with the following being the most significant:

1. Real Ownership

Real ownership is regarded as the highest level of ownership, reserved exclusively for God. It signifies that the management and governance of all aspects related to the owned entity are under divine authority, encompassing both its creation and preservation.

2. Essential Ownership

Essential ownership pertains to the intrinsic relationship an individual has with their own self, actions, and obligations. This concept encapsulates the connection between a person and their identity, responsibilities, actions, and the consequences that arise from those actions, all of which fall within the domain of essential ownership.²²

3. Conventional Ownership

Conventional ownership is defined by religious law (Sharia) and the rational consensus of individuals, conferring specific rights and benefits upon a designated person.

Some jurists contend that an individual's ownership of their body parts falls under the category of essential ownership, drawing upon considerations of necessity, customary practices, and moral conscience to support this perspective.²³

Conversely, other jurists challenge the notion of essential ownership concerning body parts, thereby disputing any rights individuals may hold regarding the transfer of these parts. However, even if one accepts the viewpoint of jurists such as Dr. Ahmad Sharaf al-Din, this does not invalidate the concept of transferring human body parts. A person may transfer items that are within their possession and control, even if they are not technically owned. Such transfers may remain valid for sale or contractual agreements, as illustrated by transactions involving waqf (endowed property) and zakat (almsgiving) assets.

Consequently, even in the absence of acknowledging essential ownership over one's body parts, it must be recognized that individuals do possess control and authority over them. Rational individuals typically regard this authority and control as sufficient to validate the transfer of body parts. Thus, from this perspective, there exist no fundamental objections to the transfer of body parts.²⁴

b- The Relationship Between an Individual and Their Body Parts According to Scholars of the General Sunni School

Non-Imami jurists have categorized the relationship that individuals maintain with their body parts into two distinct classifications:

1- Body Parts Whose Transfer Would Result in the Death of the Transferor: This category includes essential organs, such as the heart.

It is a consensus among jurists that the sanctity of human life and the authority over death ultimately reside with God. In circumstances where human consent is involved, this sanctity is upheld. It is only in cases of retaliation (qisas) that the rights of both the individual and God coexist.

2- Body Parts Whose Transfer Would Not Result in the Death of the Transferor:²⁵

With respect to this classification, the prevailing opinion among the majority of general jurists—including most Hanafi, Maliki, Shafi'i, and Hanbali scholars—advocates for the permissibility of transfer, viewing it as an individual's right and a form of ownership over property. Conversely, certain scholars, particularly adherents of the Zahiri school and other dissenting sects, contest the permissibility of such transfers, asserting that individuals lack the authority to confer possession of any of their body parts to others.²⁶

Ownership According to Legal Scholars

Dr. Seyyed Hassan Emami articulates the concept of ownership as a relationship between an individual and a material object that is absolute, exclusive, and enduring, thereby enabling the individual to extract all economic benefits from the object.²⁷

The late Mostafa Adl also examines the notion of ownership, characterizing it as a right that grants one individual complete and exclusive control over an object,²⁸ albeit without emphasizing the permanence of ownership in his interpretation.

Dr. Katouzian has delineated three fundamental characteristics of ownership: it is absolute, exclusive, and permanent. He underscores that individuals possess the right to manage their property and derive benefits therefrom, provided that they operate within the confines of legal regulations.²⁹

The notion of "absolute ownership" conveys that a property owner is entitled to make any modifications to their property, barring those actions explicitly prohibited by law. This

encompasses the rights to utilize or transfer the property to others.

Conversely, "exclusive ownership" signifies that, within the limits of the law, an owner can enjoy their property free from interference by others.

The concept of "permanence" in ownership indicates that as long as a property remains in an individual's possession, they are entitled to benefit from it. However, upon the transfer of the property to another party, while the identity of the owner may change, the fundamental essence of ownership persists. It is crucial to recognize that ownership is not absolute and may be subjected to both voluntary and legal constraints.

When considering the perspectives of legal scholars regarding property and ownership, and applying these concepts to the human body and its constituent parts, one can assert that human body parts exhibit many characteristics akin to property, albeit in a different context. Even if one refrains from categorizing an individual's relationship with their body as ownership in the conventional sense, the individual's control and authority over their body cannot be overlooked. This control provides a foundation for the legitimacy of transferring body parts.³⁰

Furthermore, the necessity for organ transplantation to save lives, particularly within the Muslim community, has prompted contemporary jurists to issue fatwas permitting such transfers. The increasing societal demand for organ donation has led Iranian legislators to formulate regulatory frameworks addressing this pressing issue. Although a comprehensive law regarding organ transfer during an individual's lifetime is presently absent, legislation enacted in 2000, entitled "Law on Organ Transplantation of Deceased Patients or Patients Whose Brain Death is Certain," has initiated the process of clarifying certain ambiguities surrounding organ transplantation. This legislation represents a significant advancement in recognizing the societal benefits associated with organ transplantation.³¹

The enactment of legislation permitting the transplantation of organs from deceased individuals or from patients with confirmed brain death signifies a noteworthy societal acceptance of the legitimacy of transferring a deceased person's body parts, whether in accordance with their expressed wishes or with the consent of their heirs. If such transfers are deemed permissible posthumously, it prompts a pertinent inquiry: why should we not also acknowledge the legitimacy of

organ transfers during an individual's lifetime, grounded in the principles of autonomy and personal authority?

The foundation for the legitimacy of these transfers rests upon the recognition of the intrinsic value of human organs and body parts. An individual's right to make decisions concerning their own body necessitates an acknowledgment of either inherent ownership or, at the very least, authority over their body parts. Furthermore, heirs possess the ability to grant permission for the organ transfer from the deceased, serving as rightful representatives in this regard. The executive regulations accompanying this law, which were approved in 2002 (1381), further reinforce the legal enforceability of organ transplantation from deceased patients or those confirmed as brain-dead.

These regulations empower medical teams, under specified conditions, to act in life-saving situations where the transplantation of an organ from a deceased or brain-dead individual is critical for the survival of a Muslim patient.

Discussion and Conclusion

In conclusion, it is imperative to acknowledge the profound significance and numerous benefits that human organs provide, both to their owners and, within the context of transplantation, to recipients. The criteria employed by jurists and legal scholars to define property are applicable to human organs and body parts. While the value of these organs may be considered potential when they remain part of a living body, there exists no fundamental barrier to recognizing their significance. At present, human organs cannot serve as subjects of agreements or contracts, such as dowries, which are commonly discussed in quotidian contexts.

Although Iranian civil law contains provisions related to property and ownership, it lacks a formal definition of "property," merely referencing the term in various articles. Consequently, a thorough understanding of the definition of property necessitates an examination of the doctrines and writings of legal scholars and jurists.

Upon reviewing these definitions in relation to human organs and body parts, it becomes evident that they possess all the characteristics and conditions requisite for recognition as material objects of property. Given their substantial value and the critical human needs they fulfill—needs that may ultimately determine the survival of individuals—there is no valid justification for

asserting that human organs, which are beneficial to both the owner and the recipient, should not be encompassed within the concept of property.

Advancements in science and technology, along with the evolving needs of society, have expanded the definitions of property. It is essential for jurists, who have traditionally refrained from recognizing the property status of human organs and body parts, to reevaluate their perspectives.

Acknowledging the property status of these biological materials carries significant implications for the civil liability of surgical teams involved in transplantation, particularly concerning the necessity for compensation for any damages incurred during the process. The recognition of an organ or body part as property is crucial in determining the extent of damages that may arise.

If human organs were not regarded as property, and if harm to them were not conceivable, the civil liability of the surgical medical team involved in transplantation would lose its relevance. Consequently, the potential property status of human organs necessitates a thorough examination of the civil liability of medical professionals. Moreover, if human organs were devoid of property status, and if human life were not held in high esteem, obtaining a release form from a patient or their guardians, or securing liability insurance for potential damages, would be rendered inconsequential.

In exploring the relationship between individuals and their own organs and body parts, this connection can be construed as a form of inherent ownership. Even among those who do not

subscribe to the concept of inherent ownership, there is an acknowledgment of the control and possession individuals exercise over their own organs and body parts. This recognition is sufficient to justify the legality of transferring human organs and body parts. There exist specific instances, such as the transfer of endowed property or assets sourced from zakat, where the transferor may not possess ownership. However, based on the principles of control and possession, both the law and rational individuals have deemed such potential transfers permissible and valid.

Although there is currently no legal provision that explicitly addresses the transfer of organs from one living person to another, the enactment of legislation concerning the transplantation of organs from deceased individuals or those with confirmed brain death has clarified certain ambiguities and addressed pressing societal needs. Given that the transfer of organs is permitted contingent upon the deceased's wishes or the consent of their heirs in cases of necessity, it can be inferred that the property status of body parts, and at the very least, an individual's control over their own body parts, has been acknowledged. The validity of transferring human organs and body parts hinges on the recognition of their property status, and an individual's ability to bequeath their body parts is rooted in their control over them. Furthermore, heirs can grant permission for the removal of organs from the deceased for transplantation, thereby acting as representatives of the deceased's will.

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Conclusions: The results showed that: although there is currently no legal provision regarding the transfer of organs from a living person to another living person, but the approval of the single article of the law on organ transplantation from deceased patients or patients whose brain death is confirmed It has answered some of the existing ambiguities and solved some of the daily needs of the society. Considering that the transfer of organs is allowed under the condition of the will of the deceased or the consent of the heirs in cases of necessity, it can be said that the ownership of body parts and at least the dominion of man over his body parts is accepted, because the premise and condition of the validity of the transfer of human body parts and organs is accepted. It is their property, and the fact that a person can make a will regarding his body parts is based on his dominion over his body parts, and the heirs, acting on his behalf, can allow the removal of organs from the deceased for transplantation after his death.

Key Words: Property and Ownership, Body Parts, Responsibility of the Medical Team, Jurisprudence, Subject Rights

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