

## Legal Examination of the Role of Beneficiaries of Deceased or Brain-Dead Patients Under the Human Organ Transplant Law of 1379

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### Abstract:

**Background and Objective:** The rapid advancement of science and technology in medicine has led to an escalating public demand for effective treatments for previously deemed incurable conditions. In many instances, organ transplantation emerges as the sole viable treatment option, necessitating the identification of suitable organ donors who meet specific criteria for donation and transplantation. Given the constraints on the availability of transplantable organs from living donors, the procurement of organs from deceased patients and individuals declared brain-dead has become increasingly significant. In 1379, the Iranian legislative body took notable steps to address these concerns by enacting a law comprised of a single article and three notes, subsequently followed by the approval of executive regulations in 1381. This legislation aims to establish a systematic framework for organ removal and transplantation processes.

**Materials & Methods:** This study employs a descriptive-analytical methodology, supplemented by comprehensive library research and documentary analysis. Data were systematically gathered from relevant scholarly publications, including peer-reviewed articles and academic texts, and subjected to comparative analysis to derive informed conclusions.

**Results:** The organ transplantation law addressing deceased patients and confirmed brain-dead individuals raises various legal questions concerning organ removal. However, it is fraught with significant ambiguities, particularly regarding the role of beneficiaries and the basis for their rights to grant consent for organ removal.

**Conclusion:** Findings indicate that obtaining consent from beneficiaries of deceased patients is imperative for organ removal under the 1379 organ transplant law. There exists considerable divergence in the interpretation of these rights' nature and foundation. Some viewpoints argue that such authority derives from the ownership representation of the deceased, while others contend that it stems from beneficiaries' ability to act in the deceased's best interests. The executive regulations classify beneficiaries as legal heirs, requiring consent solely from primary heirs, rather than from all heirs. Additionally, when the need to save another Muslim's life is substantiated, the law allows for organ removal without the universal consent of all heirs. Therefore, it can be inferred that the rights of heirs do not arise from ownership or inheritance laws, but instead reflect a respect-oriented approach, suggesting that the role of beneficiaries may be predominantly ceremonial.

**Keywords:** *Beneficiaries, Organ Removal, Brain Death, Consent, Organ Transplant Law*

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## Background and Objective

An examination of the foundational philosophies across various scientific disciplines reveals a common goal: to enhance human life and promote societal welfare. In this respect, the medical field is particularly focused on improving the quality of life. Despite significant advancements in medical science, some medical conditions still lack effective treatments. Nevertheless, the continuous efforts of specialists and researchers in this domain offer optimism for future breakthroughs.

In therapeutic contexts, there are cases where the affected organ is irreparable, making organ transplantation the sole viable alternative.

The success of organ transplantation is contingent upon the effective procurement of suitable organs, which necessitates that both donors and recipients meet specific criteria within numerous constraints. A persistent challenge is the limited availability of organs from living donors.

Though there has been a notable increase in living organ donations and some instances of organ sales, these actions have not sufficiently addressed the pressing societal demand, further exacerbating the illegal trade in human organs. As such, it is essential for the medical profession to engage in collaborative efforts with the legal sector to address these complex issues. Acknowledging the current societal challenges and the limitations associated with living organ donations, legislative frameworks have been established to facilitate organ removal from deceased patients or individuals deemed brain-dead.

In 1379, this legislative journey culminated in the ratification of the "Law on Organ Transplantation from Deceased Patients or Those Whose Brain Death Has Been Confirmed," followed by executive regulations enacted in 1381.

While this legislation has clarified the legal framework governing organ removal from deceased or brain-dead patients and has addressed certain societal needs, substantial ambiguities persist regarding the organ transfer process during life,

highlighting the necessity for an intricate legal analysis.

A notable ambiguity in the organ transplant law is the designation and authority of the beneficiaries of a deceased patient concerning organ harvesting. The law stipulates that the consent of the deceased's beneficiaries is a prerequisite for organ removal. Given that private rights in Iran are grounded in Islamic jurisprudence, it is imperative to explore relevant legal principles to clarify the rights and responsibilities attributed to these beneficiaries.

## 2. Research Questions and Hypotheses

### 2.1.1. Main Question

What is the defined role of the beneficiaries of a deceased or brain-dead patient as specified in the Organ Transplant Law enacted in 1379?

### 2.1.2. Sub Question

What is the legal basis for the rights of the beneficiaries of the deceased under the Organ Transplant Law of 1379?

### 2.2.1. Main Hypothesis

The law designates beneficiaries as primary legal heirs who are required to provide consent for organ removal. Moreover, the provision that allows for the preservation of another Muslim's life without requiring consent from all heirs implies that the role of beneficiaries may often be ceremonial.

### 2.2.2. Sub Hypothesis

The rights of beneficiaries of the deceased likely stem from established legal frameworks, societal needs, and an acknowledgment of the respect due to them.

## 3. Previous Research

A review of the existing literature indicates a notable gap in specialized studies regarding the role of beneficiaries of deceased or brain-dead patients as outlined in the Organ Transplant Law. While several publications address organ transplantation and the sale of human organs, there is limited focus on the legal framework

surrounding the beneficiaries' rights and responsibilities.

For example, Asghar Farhangi Shojai's work, *Transactions of Human Body Organs*, concentrates on transactions involving bodily organs while the donor is still alive.<sup>1</sup>

Similarly, Sadegh Mir Hosseini's text, *Buying, Selling, and Transplanting Organs*, investigates the procurement of transplant organs through sale contracts, providing only limited discussion of post-mortem organ sales.<sup>2</sup>

Ahmad Shakouri's article titled "The Juridical Ruling on Organ Removal from a Brain-Dead Individual" analyzes jurisprudential issues related to organ removal from brain-dead patients intended for transplantation.<sup>3</sup>

Abdolrahim Soltani's comparative study, "Organ Transplantation of Brain-Dead Patients in Jurisprudence and Human Rights," explores the intersections between legal frameworks and international human rights law concerning organ transplants from brain-dead individuals.<sup>4</sup>

Mostafa Kafi Qomshaei, in his treatise *Sale of Human Organs*, focuses on the acquisition of transplant organs through sales during the donor's lifetime.<sup>5</sup>

Furthermore, Dr. Saeed Nazari Tavakoli's book, *Organ Transplantation in Islamic Jurisprudence*, offers an analysis of the jurisprudential perspective on organ transplantation but does not delve into the specific roles of heirs or the basis of their rights as defined by the 1379 Organ Transplant Law.<sup>6</sup>

Additionally, Hossein Habibi's work, *Brain Death and Organ Transplantation from the Perspectives of Jurisprudence and Law*, discusses various forms of death and briefly mentions the Organ Transplant Law but fails to address the implications for heirs or the foundation of their rights concerning organ removal.<sup>7</sup>

Ismail Agha Babaei's publication, *Organ Transplantation from Deceased or Brain-Dead Patients*, reviews the legislative framework governing organ transplants but similarly lacks thorough scrutiny of the roles of heirs and the legitimacy of their rights.<sup>8</sup>

## 4. General Concepts and Terminology

Before examining the research inquiries, it is vital to define certain key terms and concepts.

### 4.1. Beneficiaries of the Patient or Heirs

The term "beneficiaries" refers to individuals entitled to inherit from another, often contextualized within guardianship roles, typically involving paternal figures. "Heirs" or "inheritors" denote those who receive an inheritance.<sup>9</sup>

Legal interpretations frequently emphasize paternal lineage; however, the common understanding may extend to include the deceased's mother as a beneficiary.

Distinguishing between "beneficiaries" and "heirs" is essential. Legally, only the father and paternal grandfather are recognized as guardian heirs, with the grandfather's inheritance contingent upon the father's status. Thus, an individual may be an heir without possessing guardian authority, exemplified by a spouse's status. Conversely, a paternal grandfather may hold guardian authority without the right to inherit if the father is still alive. Furthermore, a beneficiary may exist independently of legal guardianship, as illustrated by the deceased's mother. Importantly, the Organ Transplant Law of 1379 does not require the consent of all beneficiaries of the deceased.

### 4.2. Body Parts

In this context, "body parts" specifically denotes organs. According to the *Mo'in Dictionary*, this term encompasses limbs and any distinct, identifiable portions of the body that have developed naturally.<sup>9</sup> Medically, this term applies solely to non-renewable body parts;

renewable substances such as blood, skin, and hair are not classified as transplantable organs.<sup>10</sup>

### 4.3. Consent

Legally, consent is defined as a formal declaration of agreement or approval for a specific legal action. Contrary to prevalent misconceptions, consent is typically given post-event, while prior agreements are designated as permissions.<sup>11</sup>

### 4.4. Brain Death

Medically, brain death is recognized as a permanent condition where the brain and brainstem are entirely and irreversibly destroyed, rendering any possibility of revival impossible.<sup>12</sup>

#### 4.5. Death

Medically, death is characterized by the complete and irreversible cessation of all vital signs.<sup>10</sup>

A comprehensive understanding of death is foundational to the analysis of the current research topic.

The cessation of spiritual life entails various classifications, each carrying distinct implications for jurists and medical professionals. Given that organ procurement is predicated on the determination of death, an in-depth examination from both legal and medical perspectives is vital.

##### 4.5.1. Death in Jurisprudence

The jurist Al-Daqar defines death as "the separation of the soul from the body,"<sup>13</sup> emphasizing that this process is irreversible.

The late Allameh Tabatabai expands on this by positing that the soul encapsulates the essence of life, which is closely linked to consciousness and will.

He contends that the absence of vital signs indicates the complete departure of the soul from the body.<sup>14</sup>

These interpretations raise critical questions about the location of the soul and the physiological indicators of death.

Jurists do not possess a unified stance on this issue.

Mulla Sadra asserts the heart's significance as the principal organ,<sup>15</sup> a view that is corroborated by Fakhr al-Din al-Razi.<sup>16</sup>

The philosopher Ibn Sina posits that the heart serves both as the soul's residence and as the core of vital energy.<sup>17</sup>

Contemporary jurists, particularly Ayatollah Khamenei, present differing perspectives regarding fetal movement and the entrance of the soul into the body.

He claims that "the heartbeat of the fetus at two months does not imply the soul's entrance," arguing that it is permissible to terminate a fetus prior to the soul's entry if the mother's life is at risk.<sup>18</sup>

Consequently, akin to the assertion that a fetal heartbeat at two months does not confirm the presence of the soul, a heartbeat at life's conclusion does not necessarily validate its existence.

Thus, it can be concluded that merely ceasing the heart's activity does not confirm the soul's separation from the body, nor does a heartbeat confirm its presence therein.<sup>19</sup>

##### 4.5.2. Medical Definitions of Death

According to Dr. Goudarzi's authoritative textbook on forensic medicine, death is defined as "the complete and irreversible cessation of vital functions." This process typically begins with heart failure, followed by the death of brain cells, leading to the cessation of respiration and bodily movement. In some cases, however, the death of brain cells may precede respiratory failure, ultimately resulting in cardiac arrest due to inadequate blood oxygenation. Regardless of the sequence, definitive death is established.<sup>10</sup>

Dr. Goudarzi delineates two critical conditions for the recognition of death:

1. The heart must irreversibly cease functioning.

2. Brain cells must perish simultaneously with the cessation of respiratory activity, culminating in cardiac arrest—a condition referred to as "brain death."

A key question arises: Is brain death equivalent to a state of coma?

The medical community recognizes two distinct types of coma. One type involves profound unconsciousness without damage to the brainstem, allowing the individual to exist in a vegetative state sustained by medical interventions, including fluids, medications, and oxygen. This condition can persist for extended periods, leading either to natural death or a possible return to consciousness. Conversely, brain death represents a permanent condition characterized by the complete and irreversible cessation of all brain and brainstem functions, resulting in a medical consensus that revival is impossible.<sup>10</sup>

Integrating jurisprudence with medical science, it can be asserted that the medical community regards brain death as equivalent to actual death, even in cases where the heart continues to exhibit some level of activity. Despite this, a consensus among scholars on this interpretation has yet to emerge.

Historically, prior to advancements in medical science, the concept of brain death was not widely recognized. As such, both jurists and society often dismissed it as a definitive marker of actual death. However, contemporary jurists are increasingly realigning their views to reflect medical science.

For example, Mohammad Momen states, "A person is considered alive as long as their heart functions naturally, even in the absence of brain activity. However, if the heart ceases to function naturally and medical intervention is necessary to prevent its cessation, the individual is deemed dead, thereby permitting the transfer of their organs, including vital ones."<sup>20</sup>

#### 4.5.3. Brain Death in Iranian Positive Law

The issue of brain death has been acknowledged in various countries for several decades, with France being the first to formally address it in 1968. The United States is recognized for enacting the first legislation regarding brain death in 1970.<sup>21</sup>

An examination of the evolution of medical law in these nations, which are foundational to the Roman-German and Common Law legal systems, reveals a relatively swift acceptance of brain death and reduced resistance to organ donation and transplantation. This contrasts sharply with the religious jurisprudential objections and legislative challenges faced domestically.

A comparative analysis of international documents and conventions concerning human rights indicates that while human life is inherently protected, the determination of death according to medical standards has gained acceptance.

Countries such as Italy, Spain, Portugal, Sweden, and Argentina have similarly acknowledged brain death as actual death and established relevant regulations.<sup>4</sup>

In Iran, however, legislative progress has been sluggish. In 1993, a bill entitled "Permission for Organ Recovery from Brain-Dead Patients" was introduced in the legislature but ultimately failed to pass.

The apparent reason for this failure was that societal acceptance of the concept of brain death had not been sufficiently cultivated. This situation underscores the pivotal role of scholars and medical experts; had they effectively communicated the scientific principles and elucidated the associated legal implications, media representation could have shifted public perception toward the acceptance of brain death. This shift might have better prepared lawmakers to consider and ratify the proposed legislation.

As the demand for organ transplants has intensified, compounded by moral pressure from the public, lawmakers have eventually addressed the issue. This culminated in the proposal titled "Law on Organ Transplantation from Deceased Patients or Patients Whose Brain Death is Certain," which was presented and subsequently approved on April 6, 2000. The Guardian Council did not express an opinion within the constitutional timeframe specified by Article 94 of the Constitution, thus enabling the statute to take effect.

The absence of a formal opinion from the Guardian Council precluded any conflicts between the legislature and the Council. Accordingly, there was no necessity for the Expediency Discernment Council to intervene, as its role is to mediate disputes occurring between these two bodies. Essentially, the lack of a statement from the Guardian Council did not signify a conflict necessitating resolution.

Considering the imperative of preserving the life of another Muslim, religious teachings and esteemed jurisprudential sources maintain that this duty surpasses all others. The Constitution reinforces this notion by emphasizing the protection of individuals' physical integrity through various principles. Furthermore, jurisprudence and criminal law delineate a distinction in the

calculation of blood money (Diyah) between Muslims and non-Muslims.

The removal and transplantation of organs is permissible solely when a medical team determines that failure to proceed with the transplant would result in an imminent risk of death. According to Note 1 of the Organ Transplantation Law, the determination of death is entrusted to specialists, and the procedure is executed by a qualified medical team.

Consequently, it is reasonable to conclude that the evaluation of the necessity and parameters surrounding transplantation should also fall under the purview of certified medical professionals.<sup>1</sup>

## 5. The Role and Basis of Heir Rights in The Organ Transplantation Law Approved in 1379

A comprehensive analysis of the Organ Transplantation Law, enacted in 1999, reveals that the Iranian legislator delineates the following conditions under which the removal of organs from deceased or brain-dead patients for the purpose of transplantation is deemed permissible:

1- The explicit will of the deceased individual. 2- The consent of the guardians of the deceased patient. 3- The necessity of organ transfer and transplantation to save another individual's life.<sup>3</sup>

An examination of jurisprudential sources, particularly inquiries directed to religious authorities, emphasizes that the principal condition for authorizing organ removal and transplantation is the essential principle of preserving and safeguarding the life of a Muslim individual. This critical condition allows for the removal of organs even in the absence of a will or in circumstances wherein obtaining consent from guardians or heirs is impractical. In instances where the procurement of such consent may result in delays that threaten the viability of the organ, it is considered justifiable to proceed without the consent of the guardians. Consequently, there exists a viewpoint that supports the removal and transplantation of organs without the endorsement of the deceased's guardians.<sup>22</sup>

The principle of necessity, in the context of saving the life of another Muslim individual, is fundamental and is regarded as being of paramount importance based on religious teachings and esteemed jurisprudential sources. Furthermore, the Iranian Constitution underscores the protection of individuals' physical integrity in several articles. In both jurisprudence and criminal law, there exists a differential calculation of blood money (diya) applicable to Muslim and non-Muslim individuals, a reflection of this prioritization.

Moreover, the act of organ removal and transplantation is sanctioned solely when a qualified medical team determines that failure to transplant the organ poses an imminent risk of death. According to Note 1 of the Organ Transplantation Law, the determination of death is a responsibility assigned to qualified experts. Given that the transplantation procedure is conducted by a specialized medical team, it is reasonable to assert that the assessment of the necessity for transplantation and its related parameters should also be informed by the expertise of these specialized physicians.

It is vital to acknowledge that the law enacted in 2000, rooted in juristic sources and inquiries, stipulates that the primary condition for organ removal is to safeguard the life of another Muslim. Despite this, statistics indicate that a significant number of organ transfer requests involve kidney patients, many of whom remain on waitlists for organs from deceased or brain-dead donors due to their inability to afford organs from living donors.<sup>2</sup>

As previously mentioned, the transfer of organs and body parts may occur either during an individual's lifetime through avenues such as sale, donation, or will, or posthumously, as determined by the conditions outlined in the 2000 Organ Transplantation Law concerning deceased or brain-dead patients.

In the latter instance, a critical requirement for organ removal is the acquisition of consent from the deceased's heirs, necessitating further clarification.

Donation is the preferred method for organ transfer, and this practice has witnessed increasing promotion. In recent years, many individuals have opted to register as organ donors while alive, indicating their willingness to support posthumous donation.

Addressing the pertinent questions and ambiguities surrounding organ removal and transplantation is essential for understanding the rights of the deceased's heirs. Key considerations include whether human body parts can be viewed as part of the inheritance and whether the legal relationship between heirs and the deceased's body parts conforms to existing inheritance laws.

Can heirs, in accordance with Articles 958 and 959 of the Civil Code, relinquish their rights?

Is the foundation of these rights legislative in nature, or do heirs possess the authority to manage the deceased's body parts simply by virtue of their status as legal heirs?

Providing definitive answers to these inquiries is crucial for advancing the research topic.

Before delving into these matters, it is important to ascertain who must grant consent for the extraction of organs from deceased or brain-dead patients under the Organ Transplantation Law of 2000.

### 5.1. Determining Heirs

A review of the Organ Transplantation Law and its executive regulations reveals that the heirs recognized in this context differ from those delineated under the Civil Code and inheritance laws. Article 7 of the Executive Regulations specifies that the heirs required to consent to organ removal are the legally recognized adult heirs authorized to express such consent.

Therefore, minor heirs do not constitute individuals whose consent is deemed necessary.

The Civil Code stipulates that the age of heirs, whether they be minors or adults, does not affect their legal rights or inheritance.

It is noteworthy that heirs do not automatically assume the role of guardians for the deceased; for example, while a husband and wife may be recognized as heirs, the law does not confer upon them the designation of guardians of the deceased.<sup>23</sup>

It is imperative to distinguish between the functions of heirs as representatives of the deceased, the function of guardians, and the corresponding rights and obligations associated with each role. Heirs, in their representative capacity, inherit all rights and obligations that were attributable to their ancestor. Consequently, heirs are responsible for all duties and rights defined by law or contractual agreements enacted by the deceased. For instance, any authority and ownership that the deceased held over their property are transferred to the heirs. Moreover, if the deceased entered into a contractual agreement, the heirs are obliged to fulfill those commitments. However, it is crucial to note that personal rights and obligations—such as those related to marriage or commitments requiring the individual's direct involvement—do not fall under this principle.

Furthermore, the legal definitions of guardians of the deceased diverge from those of representatives within the context of organ transplantation law. As previously mentioned, under this law and its associated regulations, it is not obligatory to obtain the consent of all heirs, who act as representatives of the deceased.

Additionally, it is essential to elucidate the distinction between the authority of guardians of the deceased and the rights conferred upon heirs by their representative capacity. The authority granted to guardians to consent to the removal of organs from the deceased's body is derived from a position of respect, which fundamentally contrasts with the authority heirs possess over the deceased's property. This distinction is made to uphold human dignity and preserve the sanctity of the deceased's physical remains.

Moreover, the Organ Transplantation Law, enacted in 1379 (2000), explicitly states that the consent of all heirs is not a prerequisite for the removal and

transplantation of organs, thereby facilitating a clearer interpretation of the guardians' rights in relation to the deceased.

In addressing the issue regarding the basis of the guardians' rights, and whether their authority to consent to organ removal stems from their representative capacity as heirs or is grounded in a specific legal basis, it can be posited that this authority derives from the pressing need to save another Muslim's life. Were this right predicated solely on the representative capacity of the ancestor, it would necessitate application to all heirs, including minors, rather than being confined to those heirs who are legally considered adults.

In conclusion, according to the pertinent rules and regulations governing inheritance and estates, all heirs—regardless of age—serve as representatives of the deceased. In cases where heirs are minors, a guardian is appointed to manage their affairs in the absence of a designated guardian.<sup>24</sup>

Regarding whether the heirs of the deceased can forgo or relinquish their rights under Articles 958 and 959, it can be articulated that this right is legislatively grounded and aims to uphold the dignity of the deceased's heirs. In scenarios where heirs are unavailable and there is an urgent need to save another Muslim's life, the extraction of an organ from the deceased for transplantation is deemed permissible. Heirs retain the explicit right to refuse consent for organ extraction; practically speaking, if they do not approve the donation of transplantable organs, the extraction will not occur.

Addressing whether the legal relationship between heirs and the deceased's organs adheres to the same principles as inheritance mandates an evaluation of the organs' value. It is essential to note that financial rights and obligations of the deceased are the only components considered part of the inheritance.

## 5.2. The Value of Human Organs

A comprehensive discussion surrounding the valuation and ownership of human organs necessitates an examination of arguments from both proponents and

detractors—a nuanced topic that deserves its own dedicated platform. In summary, human organs embody characteristics consistent with assets; they provide financial benefits, fulfill human necessities, and are often associated with monetary compensation.<sup>24</sup>

However, their value remains latent; while an organ is part of a living body, it cannot be incorporated into contracts such as sales or gifts.<sup>25</sup>

While scholars have predominantly opposed the classification of deceased organs as assets—citing regulations concerning human remains and upholding the sanctity of human dignity—one cannot overlook the pressing social needs and the considerable value of organ transfer from deceased or brain-dead individuals in the context of saving lives. The Organ Transplantation Law enacted in 1999 was established in this context.<sup>6</sup>

Although Islamic law maintains the sanctity of the human body even posthumously, thereby precluding its classification as an asset and forbidding any violation of bodily integrity—whether during life or after death, as enshrined in Article 22 of the Constitution and relevant criminal laws—social necessities, in accordance with the principle of "Necessities permit prohibited acts," have led to the allowance of organ extraction from deceased or brain-dead patients. Such practices have been affirmed as compatible with Sharia and constitutional law, indicating that these actions do not constitute a violation of the deceased's bodily integrity.

An important consideration is that, while acknowledging the value of human organs, the organs of deceased individuals do not fall within the realm of inheritance. The rules governing inheritance pertaining to other assets of a deceased person do not extend to their organs. For example, one principle in inheritance law dictates that male heirs receive double the share of female heirs, a rule that does not apply to human organs.

Thus, when discussing whether the legal relationship between heirs and the organs of a deceased individual adheres to inheritance tenets, the answer is unequivocally negative.

This conclusion can be elaborated upon as follows:

First, the executive regulations of the Organ Transplantation Law stipulate that the extraction of an organ from a deceased individual does not necessitate the consent of all heirs but rather solely that of the legally recognized adult heirs. If the relationship between heirs and the deceased person's organs were one of succession, it would require consent from all heirs, not just the primary legal heirs.

Second, the rules and stipulations of inheritance applicable to other assets do not govern human organs or the agreements pertinent to their extraction from the deceased.<sup>7</sup>

The rights of a deceased person's legal heirs to procure body parts for organ transplantation are not rooted in inheritance principles or estate division laws. Heirs cannot treat the deceased's body parts as part of the estate, subject to inheritance rules; this right has a distinct legal basis. Contemporary jurists have asserted that if the necessity arises to save the life of another Muslim, and heirs cannot be contacted for consent, then their agreement is not obligatory. Hence, acquiring this consent can be perceived as ceremonial courtesy rather than an essential requirement for organ removal and transplantation.

It is also critical to note that, due to the exclusion of a deceased individual's body parts from the estate and the respect owed to the deceased, heirs can only consent to the extraction of body parts that are suitable for transplantation. The extraction of any body parts deemed non-viable for transplantation is classified as a violation of the deceased's body and is expressly prohibited by both Sharia law and legal regulations.<sup>5</sup>

## Discussion and Conclusion

The scarcity of organs from living donors, alongside the elevated costs associated with organ transfer and the surging demand for organ transplants, prompted the Iranian legislature to recognize brain death as actual death, aligning with legal practices observed in

various nations. This transition led to the enactment of the law governing the transplantation of organs from deceased individuals or those classified as brain dead in 2000, followed by the formulation of executive regulations in 2002.

While this law addresses several pertinent issues, it encompasses ambiguities, such as determining who may grant permission for organ removal in instances where the deceased cannot be identified. Nonetheless, under the law, organ extraction from deceased patients or those confirmed as brain dead is permissible under the following conditions: 1) the necessity to save another person's life; 2) the deceased's expressed wishes; and 3) the consent of the deceased's legal heirs.

Article 7 of the executive regulations defines legal heirs as adult heirs, with their consent deemed sufficient for organ removal from the deceased.

Jurists emphasize the fundamental nature of the necessity to save another individual's life when appraising conditions for organ removal. Certain experts maintain that if it is established that saving the life of another Muslim is contingent upon the removal and transplantation of the deceased's organ—and if access to the heirs for consent is unattainable—then obtaining the heirs' consent is rendered unnecessary, thereby permitting organ removal and transplantation to save a life.

The legislator's focus on requiring only the consent of adult heirs, rather than all heirs, in the organ transplantation law and its executive regulations raises questions regarding the role of the deceased's heirs and the foundation of their right to consent concerning organ removal.

Upon analyzing this legislative approach, it becomes evident that the urgency surrounding organ removal and transplantation from deceased individuals necessitates timely action. Waiting for minor heirs to reach adulthood to obtain consent poses impracticality if the time frame for organ viability has elapsed.

However, this position may be contested on the grounds that rights afforded to heirs should not differentiate between adult and minor heirs. If the rationale for excluding minor heirs pertains to their legal incapacity and lack of understanding, the consent of their legal

representative or a court-appointed guardian should be sought to adequately protect the legal rights of minor heirs.

In light of existing laws, enacted regulations, and prevailing convictions among contemporary jurists, it can be concluded that human body parts possess intrinsic value; however, they do not belong to the category of inheritance or the legal principles surrounding other assets of the deceased.

Consequently, the relationship between heirs and the deceased's body parts does not mirror that of representatives of an owner in inheritance matters. Specifically:

The legislature has deemed the consent of adult heirs sufficient for organ removal from the deceased's body rather than requiring consent from all heirs. Had the legislature intended heirs to function as representatives akin to estate matters, it would have mandated consent from all heirs.

Moreover, according to the perspectives of some jurists, including Grand Ayatollah Khamenei, acquiring heirs' consent is deemed unnecessary when the necessity to save another Muslim's life is unequivocally established and access to the heirs is unavailable, prompting further inquiries about the heirs' status in this context.

In addressing the central and subsidiary questions of this research and evaluating the study's hypotheses, it can be affirmed that the requirement for obtaining consent from the guardians of a deceased patient, as articulated in the laws governing organ transplantation from deceased patients or those confirmed as brain dead, is not a fundamental condition. The rights of heirs are legally grounded and do not derive from principles of ownership substitution in inheritance matters. This right exists out of respect for the guardians of the deceased and is limited to organs suitable for transplantation. Jurists maintain that when it is determined that saving the life of another Muslim is imperative, the consent of the heirs is not obligatory, effectively rendering the role of the guardians of the deceased or brain-dead patient largely ceremonial.

## Suggestions

In light of the absence of enacted laws concerning organ transfer during an individual's lifetime, as well as the ambiguities present in the law governing organ

transplantation from deceased patients or those confirmed as brain dead, several recommendations are proposed:

1- **Medical Advocacy:** Medical professionals should elucidate the complexities surrounding brain death and organ transplantation to facilitate the creation of clear and explicit laws for the legislative body.

2- **Collaborative Analysis:** The legal community, in conjunction with medical specialists and contemporary jurists, should assess the social necessities and growing demand for organ transplants. They should analyze the legal implications of organ removal and transplantation, clarify the role and rights of heirs and guardians of the deceased, and submit proposals for legislative amendments to address existing ambiguities.

3- **Legislative Alignment:** The legislature should incorporate insights from medical and legal experts while considering societal needs, aiming to enact comprehensive laws that delineate the processes for transferring human organs during life and post-mortem. Furthermore, they should clarify the legal relationship between individuals and their body parts as well as define the nature and scope of rights held by guardians and heirs concerning the deceased's organs. This would help to mitigate existing ambiguities and prevent conflicting interpretations among legal scholars, jurists, and medical teams regarding organ transplantation.

4- **Media Engagement:** The media plays a critical role in fostering cultural understanding and shaping public discourse. Given that organ donation is the most effective means of facilitating transplantation, and recognizing that challenges in accessing guardians may hinder organ transfers, promoting living organ donation through mechanisms such as donor cards or wills could prevent the loss of viable organs. The media can cooperate with medical and legal experts to develop educational programs aimed at cultivating a culture of organ donation. This collaboration would serve to meet the needs of patients requiring transplants, clarify the processes for organ extraction from deceased individuals, and establish the limits of the guardians' authority in fulfilling the deceased's wishes regarding organ donation.

## References:

1. Farhangi Shojaei, A. (2017). *Moamele-ye Aza-ye Badan-e Ensan* [Trade of Human Body Organs]. Qanun Yar Publications, p. 98 ff.
2. Mirhosseini, S. (2015). *Kharid o Foroush-e Aza-ye Badan-e Ensan* [Buying and Selling Human Organs]. Elmi va Farhangi Publications, p. 301.
3. Shakouri, A. (2024). *Hokm-e Feqhi-ye Bardasht-e Ozv az Fard-e Mobtala be Marg-e Maghzi* [Jurisprudential Ruling on Organ Removal from Brain-dead Person]. Noor Specialized Club, No. 71, pp. 10-11.
4. Soleimani, A. (2024). *Peyvand-e Aza-ye Mobtalaian be Marg-e Maghzi dar Feqh va Hoquq-e Bashar* [Organ Transplantation of Brain-dead Patients in Jurisprudence and Human Rights]. Noor Specialized Journals Club, Vol. 19, Spring-Summer, pp. 121-138.
5. Kafi Qomshe'i, M. (2012). *Bey'-e Aza-ye Badan-e Ensan* [Sale of Human Organs]. 1<sup>st</sup> ed. Tehran: Jangal & Javdaneh.
6. Nazari Tavakoli, S. (2002). *Peyvand-e Aza dar Feqh-e Eslami* [Organ Transplantation in Islamic Jurisprudence]. 1<sup>st</sup> ed. Mashhad: Astan Qods Razavi Publishing.
7. Habibi, H. (2001). *Marg-e Maghzi va Peyvand-e Aza az Didgah-e Feqh va Hoquq* [Brain Death and Organ Transplantation from the Viewpoint of Jurisprudence and Law]. 1st ed. Qom: Boostan-e Ketab.
8. Aghababaei, E. (2006). *Peyvand-e Aza az Bimaran-e Fot-shodeh va Marg-e Maghzi (Barrasi-ye Feqhi va Hoquqi)* [Organ Transplantation from Deceased and Brain-dead Patients: A Jurisprudential and Legal Study]. 1<sup>st</sup> ed. Qom: Islamic Propagation Office Press.
9. Moein, M. (2001). *Farhang-e Farsi* [Persian Dictionary], Vol. 2. Tehran: Amir Kabir Publications.
10. Goodarzi, F. (2011). *Pezeshki-ye Qanouni* [Forensic Medicine]. 10<sup>th</sup> ed. Tehran: Einstein Publications.
11. Jafari Langaroudi, M. J. (2003). *Terminology-ye Hoquq* [Legal Terminology]. 9<sup>th</sup> ed. Tehran: Ganj-e Danesh.
12. A'rabi, B. (2010). *An Soye Eghma ya Marg-e Maghzi* [Beyond Coma or Brain Death]. Tehran: Fars Publishing.
13. Al-Daqr, N. M. N. (1997). *Mawt al-Dimagh bayn al-Tibb wa al-Islam* [Brain Death between Medicine and Islam]. Vol. 1. Damascus: Dar al-Fikr.
14. Tabataba'i, S. M. H. (2011). *Al-Mizan fi Tafsir al-Qur'an*, Vol. 12. Qom: Esmailian Publications.
15. Sadr al-Muta'allihin (Mulla Sadra), M. b. Ibrahim. (1375 A.H.). *Al-Hikmah al-Muta'aliyah fi al-Asfar al-'Aqliyyah al-Arba'ah*, Vol. 9. Qom: Mostafavi Publications.
16. Razi, Fakhr al-Din M. b. 'Umar. (1407 A.H.). *Al-Matalib al-'Aliyah min al-'Ilm al-Ilahi*, Vol. 7. Beirut: Dar al-Kitab al-'Azizi.
17. Avicenna (Ibn Sina). (1413 A.H.). *Al-Qanun fi al-Tibb*. Beirut: 'Izz al-Din Institute.
18. Khamenei, S. A. (1995). *Ajwibat al-Istifta'at*, Vol. 1. Dar al-Naba lil-Nashr wa al-Tawzi'.
19. Saanei, Y. (2009). *Estefta'at-e Qazayi*, Vol. 2, 3<sup>rd</sup> ed. Qom: Partow-e Khorshid.
20. Momen, M. (1415 A.H.). *Kalimat Jadidah fi Masalil Jadidah*, Vol. 1. Qom: Islamic Publishing Institute.
21. Al-Barr, M. A. (1994). *Al-Mawqif al-Fiqhi wa al-Akhlaqi min Qadiyyat Zar' al-A 'da'* [The Jurisprudential and Ethical Position on Organ Transplantation]. 1st ed. Damascus: Dar al-Qalam.
22. Rouhani, S. M. S. (1999). *Estefta'at-e Qazaiyyeh*, Vol. 1. Sepahr Legal Institute for International Lawyers.
23. Novin, P. (2003). *Hoquq-e Madani 8: Erth va Akhz be Shofe'eh* [Civil Law 8: Inheritance and Pre-emption]. 2nd ed. Tehran: Ganj-e Danesh.
24. Katouzian, N. (2009). *Amval va Malekiyat* [Property and Ownership]. 2nd ed. Tehran: Dadgostar Publications.
25. Shahidi, M. (2008). *Tashkil-e Gharardadha va Ta'ahhodat* [Formation of Contracts and Obligations]. Vol. 1.