

The Limits of Legitimacy in Organ Transplantation from Deceased to Living Persons Between Sharia and Law

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Abstract

The transplantation of organ from the deceased to the living raises a divergence between sharia and law . According to sharia scholars differ on its permissibility, with some opinions allowing it under the condition that the sanctity of the human body is not violated. Legally it is done based on the individual or their family and is regulated by strict mechanisms to ensure no exploitation occurs.

Keywords: Organ .transfer .transplant . death . donor . recipient

Introduction

The modern world has witnessed remarkable advances in the medical field over recent decades, particularly in the area of organ transplantation, which has emerged as a decisive solution to numerous cases of chronic organ failure. It has become a source of hope, offering the possibility of saving thousands of lives. Among the most ethically and religiously controversial is posthumous organ donation, which raises profound questions about the legitimacy of such acts from the perspective of Islamic law, as well as the extent to which these practices are legally regulated to ensure the protection of human rights and dignity after death.

The significance of this topic lies in its intersection with sensitive issues concerning the sanctity of the human body, the legal and moral boundaries of post-mortem interventions, the permissibility of organ retrieval, and the conditions under which legal and religious consent can be deemed valid. It also involves the ethical considerations needed to ensure that the dignity of the deceased is not violated, and that the needs of the living are not exploited under any form of coercion or commercial transaction.

Islamic law has addressed these matters with great precision, establishing clear and detailed conditions based on the fundamental objectives of Sharia foremost among them the preservation of life and human dignity. It permits organ donation within a tightly defined framework that seeks to balance public interest with the respect owed to the deceased.

Similarly, secular legislation including Algerian law as embodied in Health Law No. 18-11 has attempted to regulate this domain in a manner that respects individual freedoms and provides a legal framework attentive to religious, medical, and human rights considerations.

Accordingly, this research paper aims to explore the extent to which Islamic legal rulings align with statutory provisions concerning the transplantation of organs from deceased individuals, with particular focus on the mechanisms and safeguards that ensure respect for human beings both during life and after death.

This leads us to the central research question: What is the legal and Sharia-based position on the retrieval and transplantation of organs from deceased to living individuals?

To answer this question, the study will be divided into two main sections:

1. Defining what constitutes a human organ and the legal criteria for determining death.
2. The position of Islamic Sharia and positive law on the transplantation of organs from deceased to living recipients.

Section One: Conceptual Framework of Organ and Death in the Context of Organ Transplantation

Before examining the legal and religious stance on the transplantation of organs from deceased to living individuals, it is essential to define what is meant by the term organ and to determine the moment at which death is legally and medically recognized.

First Requirement: Definition of the Organ

Linguistic Definition:

The term organ in Arabic, refers to any fleshy bone or limb, and more generally to parts of the human body such as the hand, leg, or nose. It may also refer to the extremities¹.

Medical Definition:

Medically, an organ is understood as a group of tissues working in concert to perform a specific function. However, both Islamic jurisprudence and statutory law provide distinct definitions of the term within their respective frameworks.

Branch One: Definition of an Organ in Islamic Jurisprudence

According to the resolution issued by the Islamic Fiqh Academy regarding the use of human body parts from living or deceased individuals (Resolution No. 1988), the term organ encompasses any part of the human body, including tissues, cells, blood, and the like such as the cornea whether it remains attached to the body or has been separated from it. It further includes both independent parts (e.g., the hand or eye) and subcomponents (e.g., corneal tissue, cells, and hair or nails), whether regenerative or not, solid or fluid like blood, and regardless of whether it is connected to the body or separated from it.² In essence, this includes all components of the human body and their biological extensions.

Branch Two: Definition of an Organ in Positive Law

Legal systems vary in their definitions of what constitutes an organ. Article 2 of Jordanian Law No. 23 of 1988 defines an organ as *any organ of the human body or part thereof*, though this definition is vague and lacks precision. French legislation, on the other hand, has issued several laws, including Law No. 1181 of 1986, which regulates the transplantation of human organs between the living and from deceased donors. Additional relevant statutes include the Law of July 8, 1949 concerning corneal transplantation and Law No. 654/94 of July 29, 1994 governing organ harvesting³.

Egyptian legislation, however, does not define the term organ explicitly. Law No. 5 of 2010, which includes 28 articles on the regulation of human organ transplantation, omits a formal definition. Earlier, Law No. 178 of 1960 was enacted to regulate blood transfusion and storage.

The Algerian legislator followed a similar approach. While refraining from defining the term *organ*, Algerian law strictly prohibits the retrieval or transplantation of organs unless for therapeutic or personal reasons. Such organs may not be subject to financial transactions. The conditions for blood

¹ - Al-Munjid fi al-Lugha, 28th ed., p. 512.

² - Hamad Salman Suleiman Al-Zayoud, Civil Liability for the Transfusion of Contaminated Blood: A Comparative Study in Islamic Jurisprudence and Positive Law, 2009, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, p. 36.

³ - Ibid., p. 38.

transfusion and organ transplantation are addressed under both the former Law No. 85-05 of February 16, 1985 on the protection and promotion of health and the current Law No. 18-11 of July 2, 2018 on health.⁴

Due to this legislative ambiguity, legal scholarship has attempted to define the term *organ*. It is commonly described as a living component of the human body's natural structure, the removal of which does not endanger the life of the individual. From a biological perspective, an organ is a collection of interconnected and diverse cells that unite to perform a specific function. The definition has evolved with the advancement of modern science.⁵

A significant debate has arisen among jurists concerning whether human blood should be classified as an organ of the human body. The debate is characterized by four main viewpoints:

First Viewpoint:

Some scholars argue that blood is not an organ but merely a fluid component of the human body. They rely on the linguistic definition of the term *organ*, which traditionally excludes liquids. According to them, an organ occupies a specific and fixed space within the body, whereas blood flows through the circulatory system. They contend that blood's fluidity and universality within the body disqualify it from being considered an organ, despite its essential functions⁶.

Second Viewpoint:

Other scholars assert that blood should indeed be classified as an organ, albeit a fluid one. This view is supported by expanded jurisprudential definitions that now encompass both solid and liquid components. Functionally, blood consists of various cellular elements suspended in plasma, performing essential roles throughout the body⁷. This interpretation was endorsed by the Islamic Fiqh Academy in Resolution No. 1 at its fourth conference held in Jeddah on June 16, 1988, which states: *"The human organ is any part of the body, including tissues, cells, and blood, whether connected or detached. Blood is considered one of the body's renewable organs."*⁸

Third Viewpoint:

This perspective views blood as akin to an organ or as part of one. However, it fails to clearly define the nature of blood or to classify the components to which it belongs.

Fourth Viewpoint:

Relying on the medical definition of blood, this view considers it a human tissue rather than an organ. This was affirmed by the Paris Court of Appeal in its ruling dated November 28, 1991, which stated: *"Considérant que le CDTs fait valoir que le sang est un tissu humain qui ne peut être assimilé à une marchandise ou à un produit..."*⁹

(Considering that the CDTs maintains that blood is a human tissue and cannot be equated with merchandise or a product...)

⁴- See Article 355 of Law No. 18-11 on Health.

⁵- Adel Abdel-Hamid Al-Fajal, Legal Provisions Regarding Human Blood Transactions and Their Effects in Civil Law and Islamic Jurisprudence: A Comparative Study, 1st ed., 2009, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, footnote on p. 5.

⁶- Al-Zayoud, op. cit., p. 39.

⁷- Wael Mahmoud Abu Al-Fotouh Ahmed Al-Azeiri, Civil Liability for Blood Transfusion Operations: A Comparative Study, PhD Thesis, Faculty of Law, Mansoura University, Egypt, p. 42.

⁸- Mohamed Jalal Hassan Al-Atroshi, Civil Liability Arising from Blood Transfusion Operations: A Comparative Study, [n.p.], Hamad Publishing and Distribution, p. 23.

⁹- Marie-Angèle Hermitte, Le sang et le droit: Essais sur la transfusion sanguine, Éditions du Seuil, March 1996, p. 281.

According to this reasoning, this is the most accurate position, as it reflects the consensus among medical professionals who classify blood as a liquid tissue especially given its ability to regenerate, unlike most other organs.

Second Requirement: Defining the Concept of Death

A central question arises in this context: **When can a person be declared legally and medically dead?** Is the determination of death a purely medical matter, or does it also involve legal considerations?

Some jurists assert that death is a strictly biological event and should thus be assessed solely by medical professionals. Accordingly, most legal systems refrain from providing a fixed definition of death, recognizing the rapid evolution of scientific knowledge. While the traditional standard was the cessation of cardiac function, modern medicine has shifted toward brain death criteria, which may continue to evolve in the future¹⁰.

Consequently, some legal systems focus instead on regulating burial procedures, criminalizing the desecration of graves, and addressing other related concerns, leaving the exact definition of death to medical experts. Legal scholars have attempted to conceptualize death not as a sudden event, but as a progressive and complex process involving the sequential cessation of bodily functions¹¹.

Determining the moment of death carries immense importance. It marks the legal boundary between life and death, dictating whether the body is treated as a living person or as a corpse. Death has legal ramifications such as the initiation of inheritance, dissolution of marital ties, and decisions concerning post-mortem procedures. For these reasons, legal systems have proposed two main standards for identifying death:

Branch One: Traditional Criteria for Determining Death

According to this view, death is declared upon the cessation of cardiac and respiratory functions, when the heart stops beating and the lungs cease to function. This is known as clinical death, where brain activity may still persist for a short duration (typically under five minutes). During this window, the heart and breathing have ceased, but brain and body cells remain intact¹².

However, scientific advancements have rendered this standard insufficient, for several reasons:

- Modern resuscitation techniques, such as electrical defibrillation, can restore cardiac function.
- The cessation of heartbeat does not necessarily mean the heart cells are dead.
- It is possible for the heart and lungs to function while the brain has ceased all activity, placing the patient in a deep, irreversible coma.

Thus, relying solely on the cessation of heartbeat and respiration is no longer an adequate or reliable method for declaring death especially in the context of organ transplantation, where precision is crucial.¹³

Branch Two: Modern Criteria for Determining Death

Under this standard, a person is considered legally and medically dead when all brain activity, including brainstem function, has ceased. Brain death, therefore, becomes the definitive marker

¹⁰- Al-Fajal, op. cit., p. 142.

¹¹- Al-Azeiri, op. cit., p. 155.

¹²- Amir Faraj Youssef, Clinical Death, Organ and Blood Transplantation, Stem Cell Therapy, In Vitro Fertilization, Surrogacy, Frozen Embryos, Cloned and Genetically Engineered Children, Abortion of Deformed Fetuses, and Sperm Banks According to Scientific Reality, Law, and the Rulings of Divine Religions, 2011, University Publications House, Alexandria, Egypt, p. 5.

¹³- Al-Azeiri, op. cit., p. 166.

separating life from death. Once the brainstem dies, artificial resuscitation becomes futile, as the central command centers responsible for vital functions no longer operate¹⁴.

The process of death occurs in three stages:

1. **Clinical Death:** Immediate cessation of cardiac and respiratory activity.
2. **Biological Death** : Occurs when brain cells are deprived of oxygen for over five minutes, resulting in irreversible damage to the brain and its functions, including those that control the heart and lungs.
3. **Cellular Death:** Complete shutdown of bodily functions and cellular activity.¹⁵

This definition aligns with the position adopted by the Islamic Organization for Medical Sciences in its 1996 symposium held in Kuwait. The organization declared:

*"The diagnosis of human death rests on the cessation of brainstem function, which governs essential life activities. Brainstem death must be diagnosed based on clear medical criteria, after excluding any reversible conditions. Once brainstem death is confirmed by a qualified medical committee, the patient is considered legally dead, and artificial life support may be withdrawn."*¹⁶

Section Two: The Legality of Transplanting Organs from Deceased Donors to Living Recipients

It is widely recognized that organ transplantation between living individuals is permitted both legally and religiously, with the majority of Islamic jurists agreeing on its permissibility. However, the core issue arises when organs are retrieved from cadavers for transplantation into living recipients a matter over which legal and Sharia-based opinions diverge.

Before delving into the legal and religious positions, it is crucial to clarify the concept of transplantation. Organ transplantation refers to the medical procedure of transferring an organ, tissue, or group of cells from a donor to a recipient in order to replace a damaged or failing part¹⁷.

First Requirement: The Position of Islamic Law on Organ Transplantation from Deceased Donors

Islamic jurisprudence presents varying views on this matter, primarily split between two major camps those who oppose and those who support such procedures each with its own legal reasoning and sources.

Branch One: The Opposing View

This group argues that illness does not constitute a necessity that justifies the violation of religious prohibitions. They base their view on the Hadith of the Prophet Muhammad :

"Indeed, Allah has not placed your cure in what He has forbidden you."

They also emphasize that healing can often occur without medical intervention through the body's natural immunity, effective supplications, or reliance upon Allah. Thus, they do not consider medical treatment to be an absolute necessity.

Most adherents of this view are followers of the four major Islamic schools of thought, which generally prohibit organ transplantation. Their reasoning includes:

¹⁴- Al-Fajal, op. cit., p. 144.

¹⁵- Youssef, op. cit., p. 5.

¹⁶- Al-Arabi Belhadj, Legal Protection of the Human Cadaver According to Islamic Jurisprudence and Algerian Medical Law: A Comparative Study, Houma Publishing, Algeria, Supplement No. 13, p. 274.

¹⁷- Samira Abed Al-Dayat, Organ Transplantation Between Sharia and Law, 1999, p. 70.

The verse: "And I will command them, so they will change the creation of Allah." ¹⁸interpreted as a prohibition against altering God's creation, including organ transplantation.

The verse: "And We have certainly honored the children of Adam..."¹⁹ which is understood to uphold human dignity in life and death, making the removal of organs an affront to that honor.

The Hadith narrated by Aisha, in which the Prophet said: "Breaking the bone of a dead person is like breaking it when alive."

The position of Sheikh Muhammad Metwally Al-Sharawi, who asserted that no one has the right to give away any part of their body, by sale or gift, during life or after death, as the human body is the property of Allah, not the individual.²⁰

Branch Two: The Supporting View

This position argues that illness represents a legitimate necessity that permits otherwise prohibited actions, drawing from both textual evidence and legal maxims. They refer to the Hadith:

"Seek treatment, for indeed Allah has not created a disease without also creating its cure."

This indicates an obligation to seek treatment when necessary. Furthermore, the Prophet allowed exceptions to prohibitions in cases of medical need, such as permitting silk garments for companions suffering from skin conditions²¹.

Thus, medical necessity is viewed as a valid justification for lifting certain prohibitions, especially when the aim is to preserve life a core objective of Sharia. The preservation of life (ḥifd al-nafs) ranks among the five essential objectives of Islamic law. If refusing treatment leads to death, then undergoing treatment becomes not only permitted but obligatory.²²

Based on these principles, many contemporary scholars including the late Sheikh Ahmed Hamani of Algeria have issued fatwas permitting organ transplantation from deceased donors to the living under strict conditions:

Verification of Death: The donor must be medically and legally declared dead. If the individual is still alive even if hopelessly ill his life must not be ended prematurely for transplantation purposes.

Consent: The deceased must have explicitly consented to donation before death. If not, a close relative (legal heir) or, in the case of unclaimed bodies, the head of state, may give consent.

A living person may not donate an essential organ such as the heart, as its removal would directly cause their death.

Prohibition of Killing: It is absolutely impermissible to end a life in order to save another.

Sheikh Hamani's position aligns with those of prominent Islamic authorities, including Al-Azhar's Scholars, who stated:

¹⁸- Qur'an, Surah An-Nisaa, 119

¹⁹- Qur'an, Surah Al-Israa, 70.

²⁰- Ben Hafidh Bibiya , Transplantation of Human Organs from the Deceased to the Living Between Islamic Sharia and Algerian Legislation, Journal of Human Sciences, Vol. 26, No. 03, December 3, 2022, Mentouri University, Constantine, Algeria, pp. 275–276.

²¹- Al-Fajal, op. cit., p. 241.

²²- Qur'an, Surah Al-Baqarah, 195.

"Removing a part of a deceased person to benefit a living individual does not constitute dishonor, as the living person retains value in society and benefits from such a procedure. This benefit outweighs allowing the organ to decay in the earth."²³

Saudi Arabia's Council of Senior Scholars: Decision No. 99 of November 6, 1982, which permits organ transplantation from both living and deceased donors.

Sheikh jad al-Haq Ali jad al-Haq: Fatwa No. 1323 of December 5, 1979, also permitting organ transplantation under the previously mentioned conditions.

Furthermore, Al-Azhar in its fatwa dated 22/11/1405 AH that complete brain death constitutes legal death, subjecting the individual to all post-mortem rulings, including eligibility for organ retrieval.²⁴

In summary, the prevailing and more widely accepted opinion within contemporary Islamic jurisprudence supports the permissibility of posthumous organ donation when it meets the criteria of necessity and is governed by strict legal and ethical safeguards. This view is grounded in several established legal maxims:

"Harm must be eliminated." "Necessities permit the forbidden." "Necessity is assessed according to its extent." "Need may be treated as necessity."

This aligns with the principles of social solidarity in both the Qur'an and Sunnah, making organ transplantation when medically necessary a duty, and the proper preservation and organization of such donations an obligation upon the community.

However, certain conditions must be satisfied to invoke the principle of necessity:

Actual and Proven Danger: The threat to life or bodily integrity must be real and imminent, threatening one of the five protected interests: religion, life, intellect, honor, or property.

There must be no lawful substitute for the prohibited act.

High Probability of Benefit: There should be a strong likelihood that the procedure will succeed and benefit the recipient.

A related question concerns the eligibility of non-Muslim physicians to make these determinations. According to the majority of jurists Hanafis, Shafi'is, and Hanbalis a Muslim physician is required for such decisions. The Malikis allow reliance on non-Muslim experts only in the absence of qualified Muslim doctors.²⁵ Some contemporary scholars, however, do not insist on the physician's religion, provided the medical expertise is credible.

Therefore, in light of the evidence and reasoning presented, such operations may be deemed lawful to achieve benefit and prevent harm.

Second Requirement: The Position of Positive Law on Organ Transplantation from Deceased Donors to Living Recipients

While it is well-established that the human body enjoys legal protection both civil and criminal the medical breakthroughs that followed World War II, particularly in the realm of organ transplantation and biological innovation, have challenged traditional legal principles. These developments have led to a conflict between two foundational concepts:

1. The absolute inviolability of the human body, which criminalizes any form of assault upon it.

²³- Nadhir Hamadou, The Position of Algerian Jurist Sheikh Ahmed Hamani on Organ Transplantation, Journal of Sharia and Law, Vol. 1, No. 2, June 2021, Faculty of Sharia and Law, Emir Abdelkader University for Islamic Sciences, Constantine, Algeria, pp. 66–67.

²⁴- Al-Arabi Belhadj, op. cit., p. 265.

²⁵- Mohamed Abd el-daher Hussein, Legal and Sharia-Based Rulings on Blood Transactions, 2002–2003, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, p. 36.

2. The legitimacy of new therapeutic methods that involve the use of human organs to treat other individuals.

This tension has given rise to a key legal dilemma: the permissibility of human organ transplantation from the deceased. Although the law allows such procedures, this permissibility is not unconditional it is subject to legal and ethical safeguards. This section will address two main aspects:

- The legal basis for the legitimacy of transplanting organs from deceased donors.
- The legal conditions and safeguards that regulate the procedure.

Branch One: The Legal Basis for Transplanting Organs from the Deceased

Before elaborating on the legal basis, it is worth noting that most secular legal systems have endorsed the transplantation of organs from deceased bodies. For example:

- **French Law** permits such procedures under the justification that interference with the body for scientific or therapeutic purposes is acceptable. This is established in Law No. 1181-76 of December 22, 1976, which authorizes the retrieval of organs such as the eye and heart²⁶.
- **Egyptian Law** affirms this principle in Article 1 of Law No. 5 of 2010 on the Regulation of Human Organ Transplantation, which states:
*“It is prohibited to conduct organ or tissue transplantation from the body of a living or deceased person except in accordance with this law and its implementing regulations.”*²⁷ Article 10 of the same law reiterates these provisions.
- **Algerian Law** also permits the retrieval of tissues and organs from deceased individuals for therapeutic purposes, under specific conditions set forth in Article 362 of Health Law No. 18-11.

Despite general agreement on the permissibility of organ transplantation, jurists have disagreed over its underlying legal justification. Three main theories have emerged:

1. The **Theory of Legitimate Cause (al-sabab al-mashrou)**.
2. The **Theory of Necessity (al-ḍarūra)**.
3. The **Theory of Social Interest (al-maṣlaḥa al-ijtimaiya)**.

1. Theory of Legitimate Cause:

This theory asserts that a human act is considered legitimate if its underlying purpose is legitimate. Hence, the permissibility of organ transplantation depends on the intention behind the act. If the purpose is therapeutic such as saving a life then the procedure is lawful²⁸.

French legal scholars were among the first to advocate this position, seeking to narrow the scope of the traditional concept of bodily inviolability. They argued that the law should evaluate the *purpose* of interference with the body: if the goal is medically justified, the act is permissible. Organ transplantation, being a life-saving measure, thus fulfills a legitimate cause²⁹.

However, this theory faces two main criticisms:

- It lacks a precise standard to determine whether the purpose is truly legitimate.
- It fails to establish a framework of necessity, prompting some scholars to add a condition: the procedure must be the only available method to save the patient’s life.³⁰

²⁶- Al-Azeiri, op. cit., p. 176.

²⁷-Youssef, op. cit., p. 145.

²⁸- Khaled Mousa Toni, Criminal Responsibility in the Field of Blood Transfusion, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, p. 124.

²⁹- Al-Fajal, op. cit., pp. 250–251.

³⁰- Al-Azeiri, op. cit., p. 113.

3. Theory of Necessity:

Many legal scholars ground the permissibility of organ transplantation in the principle of necessity, defined as a situation in which a person causes minor harm to prevent greater harm, either to themselves or to others³¹.

In the medical context, this principle allows physicians to weigh the risks of treatment against the danger of inaction. If the recipient's life is in danger and the transplant is the only viable option, necessity justifies the procedure.³²

When the donor is alive, the risks to the donor's health may outweigh the benefit to the recipient. However, if the donor is deceased, the interests of the recipient prevail.

The **Algerian Civil Code** enshrines this principle in Ordinance No. 75-85 of September 26, 1975³³.

Similarly, Article 364 of the **Algerian Health Law** stipulates:

“Organ, tissue, or cell transplantation may only be conducted if it constitutes the sole means of preserving the life or physical integrity of the recipient.”

Egyptian law takes a similar stance: Article 2 of Law No. 5 of 2010³⁴ authorizes transplantation only when medically necessary to preserve life or treat a serious condition—and only if the procedure is the only effective remedy.

This theory involves two components:

- **Objective Element:** A real and imminent danger threatens a legally protected interest.
- **Subjective Element:** The individual facing danger chooses between violating a law and preserving life or well-being.³⁵

Because medical decisions require such balancing, it is the physician's role to evaluate whether the conditions for necessity are present. Jurists emphasize the following prerequisites for invoking this doctrine:

- The patient faces a life-threatening condition.
- The expected benefit significantly outweighs the harm caused to the donor.
- The transplant is the only available treatment.³⁶

Critics of this theory argue that it gives physicians excessive power to act without the donor's consent. Some have even argued that if the conditions of necessity are met, consent is unnecessary—an argument widely rejected. Consequently, many insist that informed consent remains essential. Moreover, the theory does not exempt physicians from liability: under Article 130 of the **Algerian Civil Code**, a person who causes harm to another in order to avert greater harm is liable for damages as the court deems appropriate.

4. Theory of Social Interest:

This theory holds that the legitimacy of organ transplantation rests on its contribution to the greater good. While personal bodily integrity serves individual interests, it also supports the individual's

³¹ -Al-Atroshi, op. cit., p. 40.

³² -Al-Fajal, op. cit., pp. 252–253.

³³ - See Article 130 of the amended and supplemented Civil Code.

³⁴ - Mohamed Al-Shahaoui, Commentary on Law No. 05 of 2010 Governing the Transplantation of Human Organs, 2011–2012, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, p. 190.

³⁵ - Al-Azeiri, op. cit., p. 118.

³⁶ - Toni, op. cit., p. 117.

societal role. If illness impairs a person's ability to fulfill social obligations, their recovery through transplantation enhances social welfare.³⁷

According to this perspective, when a person donates a kidney to save another from kidney failure, the resulting social benefit outweighs the loss of the organ both in individual and collective terms. This theory draws from religious, legal, and cultural principles that promote altruism and solidarity.³⁸ Each of these theories presents a valid perspective. In practice, they are not mutually exclusive, but rather complementary:

- The patient is in a state of necessity (**Theory of Necessity**).
- The intention behind the transplant is to save life, making the act legally justifiable (**Theory of Legitimate Cause**).
- The broader benefit to society affirms the procedure's value (**Theory of Social Interest**).

Branch Two: Legal Safeguards for Transplantation from the Deceased

While Algerian law permits organ transplantation from deceased donors, this permissibility is conditional. It is governed by multiple safeguards relating to the donor, the recipient, and the procedure itself.

Health Law No. 18-11 establishes a National Agency for Organ Transplantation, tasked with coordinating, developing, and supervising the legal and ethical aspects of organ retrieval and transplantation. Chapter 4 of Title 7 of the law is dedicated to bioethics, encompassing blood donation, assisted reproduction, and biomedical research.

Article 362 of the Health Law provides the legal framework for posthumous organ donation:

- Organ retrieval may only occur after *medical and legal confirmation of death* based on scientific criteria defined by the Minister of Health.
- Retrieval is prohibited if the deceased had expressed refusal during their lifetime.
- Refusal may be communicated by any means, including enrollment in the national registry of refusal.
- The transplant team must consult the refusal registry. If no entry is found, the family must be consulted in the following order of priority: parent, spouse, children, siblings, or legal representative.
- The family must be informed of any organ retrieval procedures undertaken.

Based on these provisions, the following legal conditions are required:

1. **Confirmation of Death:** Must be established medically and legally, as previously explained.
2. **The Deceased's Position:** If refusal was registered during life, organ retrieval is strictly prohibited.
3. **Family Consent:** Consent must be documented in writing, signed before two witnesses, and submitted to hospital authorities. In emergency cases—such as when organ viability is at risk—kidneys or corneas may be retrieved without family contact, provided the medical committee approves.
4. **Protection of the Donor's Dignity and Data:** The identities of the donor and recipient must remain confidential. Article 363 of the law prohibits any member of the transplant team from participating in the death certification of the donor.

³⁷- Al-Atroshi, op. cit., p. 47.

³⁸- Nasser Al-Din Marouk, *Organ Transplantation in Comparative Law and Islamic Sharia: A Comparative Study*, 1st ed., 2003, National Office for Educational Publications, Algeria, p. 82.

Other countries, such as Egypt, require written, notarized consent from the donor³⁹. Islamic and Kuwaiti laws similarly mandate written wills or declarations. The U.S. Uniform Anatomical Gift Act, in contrast, permits organ donation through a donor card⁴⁰. Algerian law does not prescribe a specific format for consent but details how refusal must be recorded.

Organ and tissue transplantation from the deceased to the living is permissible in both Islamic law and Algerian legislation, provided that the procedure yields a clear and exclusive benefit to the recipient, as certified by a qualified physician, and that proper authorization is granted by the deceased's heirs or legal representatives.⁴¹

Conclusion:

This study has demonstrated that the issue of organ retrieval and transplantation from deceased donors to living recipients is both multifaceted and highly complex. It lies at the intersection of several sensitive dimensions—medical, legal, religious, and ethical. Through this analysis, it becomes clear that modern legislation, notably Algerian law, aims to regulate this domain in a manner that reconciles the protection of human dignity after death with the imperative to preserve life and provide treatment to those in urgent need of transplantation.

Our findings indicate a notable convergence between legal and Sharia-based frameworks regarding core safeguards, including: the requirement to confirm death, the necessity of donor or family consent, the prohibition of organ trade, and the preservation of human bodily integrity. This alignment reflects an evolving legislative and ethical consciousness, one that is increasingly equipped to address emerging medical challenges in a principled and humane manner.

In light of this, it is evident that promoting a culture of organ donation, along with the activation of regulatory structures such as the national registry of refusal and acceptance, and the creation of organ banks, is an essential step toward realizing this noble humanitarian mission—one rooted in full respect for human dignity and the rule of law. Nonetheless, practical challenges remain, such as weak public awareness and the slow development of the national refusal registry, which continue to hinder the full realization of the objectives underlying organ transplantation policies.

Accordingly, we recommend the following:

- **Enhance the Legal and Regulatory Framework:**

By issuing supplementary regulations that clearly define the procedures for registration in the refusal or acceptance registry and specify the scientific criteria for confirming death.

- **Intensify Public Awareness Campaigns:**

To promote the culture of organ donation among citizens, with a particular emphasis on the religious and humanitarian dimensions, while correcting widespread misconceptions.

- **Develop Medical and Legal Expertise:**

Through the establishment of specialized units in hospitals to oversee transplantation procedures and provide training in ethical, legal, and medical aspects.

³⁹- Article 08 of Law No. 05 of 2010 concerning the Regulation of Human Organ Transplantation in Egypt: "It is permissible, when necessary to preserve the life of a living person, to transplant into him an organ, part of an organ, or tissue from the body of a deceased person, provided that the deceased has made a documented or officially certified will to that effect before death..."

⁴⁰- Al-Azeiri, op. cit., p. 182.

⁴¹-Osama Ramadan Al-Ghamri, Regulations and Laws Governing Medical Practice and the Professional Errors of Physicians, 2009, Dar Al-Koutub Al-Qanouniya, Egypt, p. 103.

- **Activate the Role of the National Organ Transplantation Agency:**

By strengthening its capacity to manage databases of donors and refusers, and to coordinate transplant operations across national healthcare institutions.

- **Ensure Oversight and Transparency:**

Through the formation of independent committees tasked with monitoring compliance with donor and recipient rights, and preventing abuse or exploitation.

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