

TRANSPLANTING OF THE NAJIS AL-AIN (INHERENTLY IMPURE) ANIMALS' BODY ORGANS INTO THE HUMANS FROM THE JURISPRUDENTIAL AND LEGAL PERSPECTIVES

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ABSTRACT

Body organ transplantation from animals to human beings is amongst the modern and novel issues in the medical science. The issue is of great importance in individuals and societies' thoughts. Body organ transplantation which is the result of the progress in the medical sciences is amongst the new titles discussed by the jurisprudents under the title of the newly emerging issues. The body organ transplantation is as old as the mankind history. Search about this topic takes us back to two thousand years ago at which it was done for saving the human beings' lives. In the Islamic territories, as well, the issue is very old. During the lifetime of the great apostle of Islam (may Allah bestow him and his sacred progeny with the best of His regards) and His Highness Imam Ali (PBUH), cases can be seen of the cut hands or ears that have been subjected to transplantation by the physicians. Due to the importance given to the rescuing of human beings' lives and, on the other hand, the shortages in the number of the human donors, the physicians have thought about transplanting animals' body organs into human beings. The transplantation of the body organs of the animals that are anatomically compatible with the human body but are considered inherently impure and unclean should be investigated from the jurisprudential perspectives. Legally, there is no explicit text about the legality or illegality of transplanting animals' organs into humans. Therefore, according to the contents of the Act 167 of the constitution, a judge is obliged to refer to authentic Islamic resources or credible decrees for issuing a sentence about a case for which there is no verdict in the statutory provisions.

Keywords: human beings, body organ transplantation, animal, medical sciences, jurisprudential basics, legal proofs.

INTRODUCTION

Body organ transplantation is amongst the common issues of the today's civilized and advanced world. Organ procurement (previously called organ harvesting) and transplanting it to a human being's body for saving his or her life is of great importance in the today's modern medical science. In regard of this special and sensitive subject, countless questions have been posited and the Islamic jurisprudents and jurists cannot remain silent about them because the Islamic jurisprudence and law should provide answers to a number of the religious and legal verdicts related to body organ transplantation; thus, it is necessary to extract the religious and legal verdicts of these issues from the jurisprudential and legal texts and offer them to the society.

Since many of the patients' lives are at risk due to the shortage of the organ donors and, on the other hand, the costs of such operations are very high for them, the medical community has decided to resort to the transplantation of the body organs of the animals that are anatomically compatible with the human beings' body organs instead of waiting for the donation of a human

body organ and this is surely accompanied by canonical and legal problems. The current research paper intends to investigate the transplantation of the animals' body organs into the human beings from the perspective of jurisprudential and legal perspectives.

Discussion One: Conceptualization

• Chapter One: Body Organ Transplantation Concept

Literally, transplantation means growth of a plant, raising and sowing seeds (Hatami and Amini, 2017). Organ transplantation commonly refers to the removal of a defective or ineffective organ from the body and replacing it with another body organ that can be artificial and simulated (Hatami and Amini, 2017).

Organ transplantation is specific to the solid body organs and it does not include blood transfusion, plasma injection and so forth; moreover, such operations as plastic and reparatory surgeries are not commonly considered as body organ transplantation in medicine (Hatami and Amini, 2017).

The Second Discussion: the History of Organ Transplantation

It is now nearly two centuries passed since the time that a body organ was successfully transplanted in the history of medicine. It was in 1823 that the first skin grafting operation from a part of an individual's body on another spot of the same person's body was carried out in Germany.

Since then, the progresses made in medical science has enabled the transplantation, and replacement of the body organs from mitochondrial donation within the format of the ovule cells to the possibility of donating and transplanting the majority of the internal body organs and tissues when they are found incapable of continuing life in the body and accompanied by death risk. It has been forwarded to the extent that a physician, named Sergio Canavero, in Italy has recently claimed the possibility of head transplantation! This is a controversial idea that although currently taken as nothing more than a joke by many of the experts, informs of the hope before the mankind in the future years.

Since long years ago, there are ideas proposed for replacing and transplanting of the disabled body organs by artificial objects and organs or natural body organs of the recently dead healthy human beings and the works remained from those times justify this issue.

In Louvre Museum in Paris, there is a container belonging to four centuries BC and the image on it shows a handicapped person with a wooden leg. A scene of Damascus during the third century BC can be seen on a painting that is kept in Prado Museum in Madrid; it shows a group of physicians that are transplanting the leg of a dead black person to the body of a white person who is dying with a crushed leg.

Apparently, this transplanting operation has been successful and it is called Saint Cosmas and Saint Damian miracle in the Christianity world. The Muslims also succeeded in transplanting a cut nose of a person during Timurid dynasty for the first time and the western world subsequently learned plastic surgery from the Muslims.

During the 16th century, the simple operation of transplanting the human skin was conducted and the transplantation of the body organs entered a new phase since the second half of the present century on 26th of December, 1952, with the transplantation of a mother's kidney to her child.

Of course, it was for the first time in the history of kidney transplantation that a kidney was removed instead of from a dead body from the live body of Gilbert Renard, Marius Renard's



mother, so as to be transplanted to her child who had lost his kidney in an accident for saving his life. It was carried out successfully and the patient got up after twelve days since operation and happily started walking but he died during a convulsion due to the latency of the graft rejection on 27th of January.

Seventeen other individuals who were subjected to kidney transplants after him died due to the rejection phenomenon one after the other until 23rd of December, 1954. Then, the surgeons grafted a patient who had lost his kidneys the kidney of his real twin brother who had been both born of an egg cell and the kidney transplant was a success due to the fact that the tissues of the patients were not alienated with the grafted organ.

Afterwards, several kidney transplants were successfully conducted between homozygous twins until 1959 that the surgeons performed the kidney transplants between heterozygous twins and exposed the graft receptor to Tele-cobalt Irradiation after the surgery to stop rejection and the obtained results were successful and the grafted kidney was not rejected.

After taking an important step through cobalt irradiation in advancing the favorable results in transplantation, the scientific founders began studying about the homozygous and heterozygous groups of the human beings and they could find solutions to most of the problems in organ transplantation after years of efforts; nowadays, the organ transplants are being done in a high rate of success through observing such issues as protection of the graft organ before transplantation and tissue-based grouping of the graft donor and receiver and preparing the receptor before and after the operation and medicinal fight against rejection.

After kidney transplantation, it was for the first time on 3rd of December, 1967, that the heart of a person was transplanted into another person's body by Dr. Christian Bernard. But, the first person with the grafted heart died eighteen days later as a result of the infectious diseases' progress. The surgeon did not get frustrated and immediately rolled up sleeves and grafted a person's heart to another person for the second time on 2nd of January, 1968 and this transplantation was followed by success.

This way, an anonymous surgeon dared and replaced the heart that was invincible in the past and considered as the center of the animal spirit and caused uproar and commotions in the public thoughts that realized the heart as the manifestation of life and proved the current definition of the medical knowledge of death that was attributed to the necrosis of the cells in the supreme centers of brain which was considered to be more important than the heart and it was practically shown that the heart, this pineal piece of meat inside the chest, is nothing more than a pump which is commissioned to the pumping of blood and getting it reached the entire body organs and parts.

The body organ transplantation was subsequently advanced more rapidly and, besides the transplanting heart and kidney, the transplantations of pancreas, liver and lungs have been successfully carried out until now that the progress in this regard has reached the point that the bone marrow transplantation is done on an embryo that is yet to be born.

The preliminary manifestations of this phenomenon in the far past belongs to the transplanting of the cut fingers and, in fact, transplantation of the separated organs of the body that was conducted within the format of the traditional medicine and, in between, the scientific form of the aforementioned operation through taking advantage of the modern medical instruments dates back to the 20th century wherein the first vascular grafting appeared.



Body organ transplantation is amongst the latest methods of treatment applied for the hard-to-cure or incurable patients who have no other way except replacement of their unhealthy body organs with the healthy organs due to their being inflicted with such diseases as renal malfunctioning, hepatic cirrhosis and/or biliary atresia.

The Third Discussion: the Quality of Grafting Animal Body Organs into Human Beings

- **Chapter One: Basics of the Permissibility of Transplanting an Inherently impure and/or a Dead Animal's Body Organs into Human Beings**

Jurisprudentially, the foundations of the possibility of transplanting an inherently impure animal's body organs into human beings are emergency, approval by intellect and permissibility principle as well as such confirmations as the necessity of repelling loss and avoiding difficulty.

A) Emergency:

Literally, emergency means sudden need demanding immediate action (Fayumi, no date). "The Axiom of Emergency" in the jurisprudential terms conveys the idea that the emergence of a need removes the canonical obligation from the shoulder of an obliged person meaning that the obliged person is excluded from the subject of the canonical verdict the result of which would be the permissibility of doing a forbidden action or leaving an obligation undone under urgency conditions such as eating the meat of a dead animal or quitting saying prayers that are forbidden under ordinary conditions and permitted under emergency conditions (A group of researchers and Hashemi, 2005).

It is generally held that emergency includes an intellectual not merely an imaginary fear about sustaining a usually intolerable life or financial and fame or honor loss by one's own self or another person whose protection is compulsory to an individual through doing something or leaving it undone. The life risk should be to the extent of getting killed or sustainment of a disability or infliction with a disease or intensification of the disease or elongation of the treatment period of hardening of the treatment and/or affliction with a condition leading to one of them (Najafi, 1995).

Emergency is a term used for referring to the fear of an intolerable loss or risk by doing an action or leaving it undone; in more perfect terms, emergency is a state wherein an internal pressure forces an individual to do something that s/he does not like even though there is no threat directed at him or her on the outside; it means that although the person has the will for doing something but it is not accompanied by his or her satisfaction such as when an individual is obliged to sell his house for treatment of his or her child in which case s/he does so against his or her internal tendencies and under emergency conditions but with his own want and will.

Emergency is one of the secondary titles in Shiite jurisprudence and it can be removed in favor of a preliminary verdict and emergency may occasionally appear in doing an action and sometimes in leaving an action undone. In other words, emergency refers to being forced to voluntarily perform an action with the satisfaction in heart or with the complete privation of free will meaning that an obliged person is excluded from the subject of a canonical verdict under emergency conditions the result of which would be permissibility of perpetrating a forbidden action or leaving a compulsory obligation undone like eating the meat of a dead corpse or quitting saying prayers that are prohibited under ordinary conditions but permissible under emergency conditions (Moradi, Kaikha and Khakpur, 2016).



In the words of the fundamentalists, emergency has been used with two meanings:

- 1) It means perfect privation of free will where an external factor coercively deprives a person of his or her own free will like when a person is thrown down from a high ground due to typhoon. In the discussion about the axiom of "*Al-Ezterār Bi Sū'e Al-Ekhtiār Lā Yanāfi Al-Ekhtiār*", emergency refers to this special type that also includes coercion and reluctance (Bahrani, 1995).
- 2) It means incumbency and hardship and being in a state of hardship the tolerance of which is habitually difficult or unbearable in which case an individual is obliged to perform an action against his or her own internal tendency and for a special intention and satisfaction. This meaning of emergency is commonly intended in the science of principles (Bahrani, 1995).

Proofs of the Axiom of Emergency Regarding the Reasons for the Transplantation of the Inherently Impure Animals' Body Organs into Humans:

A) **Holy Quran:** There are numerous ĀYĀT in the holy Quran that can justify this axiom, including:

- 1) The God has only forbidden the (meat of) the dead, blood, meat of pigs and whatever the animals that are sacrificed to any name other than His name. [But] A person who has no other choice has not sinned in case of not being an invader and despotic to [eat them for saving his or her life under emergency conditions] and the God is the most generous and the most merciful"¹.
- 2) "... The God has not placed any difficulty and hardship on you in your religious tasks ..."²

As it is observed, the foresaid ayah permits the perpetration of a prohibited action and simultaneously allows the quitting of the compulsory obligations under the emergency states because the criterion is the existence of difficulty and pain whether it is stemmed from quitting a forbidden action and/or performing a compulsory obligation.

B) **Narrations:**

- 1) Amongst the most important Hadiths that help reasoning the substantive nature of this axiom is the "hadith of obviation". In this Hadith, Imam Sadeq (PBUH) quotes the great prophet of Islam (may Allah bestow him and his sacred progeny the best of His regards) in the following words: "nine things were removed from the shoulder of my nation: mistake and forgetting, things done reluctantly, things one does not know, things one cannot tolerate, things done under emergency conditions and so forth"³.

¹ BAQARAH: 173.

² "... *Wa Mā Ja'ala Alaykom Fi Al-Din Min Haraj ...*"; HAJJ: 78.

³ In regard of the investigation of the document and content of this Hadith, please see entry 10471 (hadith of obviation) and entry 31750 (investigation of the documents to the hadith of obviation).



- 2) It is ordered in an authentic hadith quoted by Abi Basir from Imam Sadeq (PBUH) that “there is no forbidden action unless it is made permissible by the God under emergency conditions”⁴.

The hadith’s implications to this jurisprudential axiom is clear and discernable and its significations include the situational and obligational forbiddance and, on the other hand, the term “Shay’e” [thing] is an indefinite noun implying denial of specificity hence incorporating all the things, i.e. all the forbidden actions.

- 3) Amongst the other narrations that can be referred to about this axiom is the hadith that was pointed out in the text of the question.

Imam Baqer (PBUH) orders that “prudence can be practiced in everything; the God has permitted everything that the mankind might find oneself in emergent need of it” (Barqi, 1952).

This hadith has been narrated from Imam Baqer (PBUH) and it has a correct and authentic document (Behbahani, 1997) and it serves the permitting of prudence⁵.

This is while the hadith presents a general idea and includes the permissibility of quitting a compulsory obligation under emergency conditions, as well.

C) Intellect:

Common sense is one of the proofs and resources of exegesis. Amongst the issues wherein the intellect rules permissibility or even necessity is the perpetration of a forbidden action for the preservation of a greater expediency⁶. And, saving of one’s own or other’s life is amongst the great expediences in the face of which the perpetration of many of the forbidden actions seems trivial. Therefore, the intellect rules permissibility when a person is incumbently forced for saving his life and treating his body or other issues of the like to perpetrate a forbidden action or is coerced to quit the performance of a compulsory action, and the canonical verdict of the permissibility is also proved by the assistance of the axiom of the concomitance between an independent intellectual verdict and canonical verdict (A group of authors, no date).

D) Intellectuals’ Ways of Conduct:

Undoubtedly, the intellectuals predict the exceptional and emergency cases when writing law and exclude the urgent, difficult and hardship cases through enacting notes and legal articles. In practice, as well, a person cannot be reproached and punished if s/he stops following a rule when being coerced under emergency conditions. And, since the sacred canonical ruler is a member of the group of intellectuals and he has not prohibited and inhibited this method rather it is figured out based on the ayat and narrations in this regard that he has confirmed and

⁴ “*Laisa Shay’an Memmā Harrama Allah Ellā wa Qad Ahallahū Li Man Eztorra Elayh*”; Tusi, Abu Ja’afar, Muhammad Ibn Hasan, (1987), “*Tahzib Al-Ahkam*”, v.3, 4th ed., Hadith 397, Tehran, Dar Al-Kutub Al-Eslamiyyeh, p.177.

⁵ For more information about prudence, please see entry 12377 (limits of prudence) and entry 1779 (reasons of the Immaculate Imams (peace be upon them)’ practicing of prudence).

⁶ “*Daf’e Al-Mazār Wajebon Aqlan*”; Tusi, Abu Ja’afar Mohammad Ibn Hasan, (1968), “*Al-Mabsūt Fi Fiqh Al-Emamiyyeh*”, v.6, 3rd ed., Tehran, Al-Maktabah Al-Mortazaviyyeh Li Ehya’a Al-Athar Al-Ja’afariyyeh, p.285.



endorsed it, the method will be also and authentic and proof for us (A group of authors, no date).

And, since the transplantation of the body organs of an inherently impure animal into human beings is carried out for saving the human life, it is permissible and, based thereon, the jurists generally hold considering the above-presented discussions in this regard that the grafting of a part of an inherently impure animal like the dog's intestine to the humans in case that the patient is under an emergency condition is permissible and devoid of any fault.

The narrations and the intellect rule it based on the holy Quran's ayat that there should be issued no verdict causing hardship and loss to the human beings. This is while no prohibition has been made for the transplantation of the body organs of the inherently impure animals into human beings so that we would be required to deny it through resorting to the axiom of no loss and maxim of denial of hardship. However, it can be preferentially stated that the same way that the prohibitions are diminished by the fact that nobody should sustain a loss and remain in hardship the same documents can be superiorly applied for confirming the permissibility of such transplantations (Moradi, Kaikha and Khakpur, 2016).

It seems that the grafting of the inherently impure animals' body organs into the human beings is permissible from jurisprudential perspectives. Some of the jurists, as well, have explicitly expressed the same claim. For instance, Imam Khomeini (May Allah consecrate the honorable soil of his tomb) orders that "it is permissible to transplant a body organ of an inherently impure animal to the body of a Muslim person" (Mousavi, 2000).



- **Chapter Two: the Legal Perspectives Regarding the Transplantation of Inherently impure Animals' Body Organs into Humans**

The grafting of the body organs of an inherently impure animal into the humans is not much of a dilemma since the donor of the body organ is an animal. According to the search made in the country's current regulations, including the civil law, Islamic Penal Code of Law and the other statutory provisions, it appears that there is no explicit text regarding the legality or illegality of the transplantation of the animals' body organs into humans; so, it seems that the issue's verdict has to be pursued based on the contents of the Act 167 of the constitution that obliges a judge to issue a sentence about a case for which there is nothing stated in the statutory provisions through referring to the authentic Islamic resources or the credible decrees (Hatami and Amini, 2017). It can be stated that the law has prescribed the reference to the jurisprudential resources in silent cases, body organ transplantation is also permissible and devoid of any fault from the legal perspectives because the canonical permission of such an undertaking was proved in the above lines and, as it was mentioned, the contemporary well-known jurists, as well, have decreed in favor of the permissibility of transplanting the animals' body organs into humans (Hatami and Amini, 2017).

CONCLUSION:

The results of the present study indicate that transplantation of the inherently impure animals' body organs into Muslims' body organs is permissible from the perspective of the jurisprudents and through using the emergency axiom because such transplantation occurs under emergency and necessity and, considering the fact that the objects are generally considered to be clean, the transplantation seems to be devoid of any canonical problem. On the other hand, the permissibility of the transplantation of the animals' body organs into humans is proved through referring to the jurisprudents' decrees and the axioms of no loss and no hardship. The use of the medical artefacts like the things that are utilized in the various kinds of skin's reparatory surgeries or the metal or quasi-metal segments that are placed in lieu of bone (in fractures of the leg and other body organs) as well as the use of the body organs of the live animals or even the dead animals that have been purified (like grafting of an animal's eyes into humans) are permissible from the perspective of the jurisprudents of all the religions and there is no canonical prohibition for it. Cutting the body organ of an animal, even such an inherently impure animal as dog, for transplantation into humans is also permissible.

The grafted parts would be body organs of the human beings in case of continuing life and using them during saying prayers would be correct. If the grafted parts stop growing, using them during saying prayers would be still correct even in case that the transplantation has been conducted under emergency for meeting of a hardship. The transplantation is forbidden and using the grafted body organs for saying prayers would make it incorrect if the transplantation has not been done under emergency condition for the removal of hardship and additionally if the grafted body organ ceases growing



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