Journal of the British Islamic Medical Association

Research

Vol. 1 - No. 2 | August 2019 | www.jbima.com

Three British Muftis Understanding of Organ Transplantation

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Keywords: *Organ donation, fatwa, Mufti, bioethics, ulama, fiqh, medical ethics, Islamic law, Islam, Muslims, embodiment, opt-out, consent.*

Abstract

Modern technology has given rise to a host of legal and theological questions for Muslims. One such question that engaged Muslim scholars since the 1950s was the issue of organ donation. It brought into question and conflict a number of ethical teachings such as the value of saving life as opposed to the dignity and honour that should be afforded to the dead. The article is based on a small pilot-study comprising themes from interviews with three UK muftis. The resulting conclusion of the article will form the evidence-base for further research into understanding perception of organ transplantation and authority among UK Muslim religious professionals (imams, ulama and chaplains).

Introduction

Modern technology has given rise to a host of legal and theological questions for Muslims (1). One such question that engaged scholars in the Muslim world since 1950s was the issue of organ transplantation (2). It brought into question and conflict a number of ethical teachings such as the value of saving life as opposed to the dignity and honour that should be afforded to the dead. It pitched God's sovereignty against human autonomy over their bodies. The life-saving and death-ridding technology gave rise to debates related to exploitation of the weak and the utilitarian use of the human body as means to an end and not an end in itself.

Scope of the Research

From the outset, it should be mentioned that all discussions on organ transplantation in this article refer to allotransplant i.e. receiving from and donating to another human being. Autotransplant and xenotransplant are not the focus of this article as they do not pose much of an ethical problem unlike allotransplant. Furthermore, the discussion on allotransplant in the case of a living donor is only confined to the donation of non-vital organs as there is a consensus on the impermissibility of donating vital organs (3, 4). Additionally, the article also excludes discussion on the transplantation of the male and female reproductive glands for both living and cadaver donor as the impermissibility of this is also agreed upon (5), although some British legal scholars are making a plea for Muslim scholars to rethink this position in the case of uterus transplant (6). The article is structured such that I combine ethico-legal discussions on organ donation with data from a small qualitative pilot-study. The resulting conclusion of the article will form the evidence-base for further research into understanding perception of organ transplantation and authority among UK Muslim religious professionals (imams, ulama and chaplains). Studies have shown that the ulama are the first port of call for members of the Muslim community for bioethics related issues (7, 8), and any form of intervention in the Muslim community would need to start by educating the ulama. This study marries the abstract (ethico-legal) with practical paradigm (qualitative research) in order to give epistemic weight to the daily life practices of Muslims in the production of knowledge (9). Thus, I take a two-pronged approach. Firstly, a small survey of organ donation fatwas issued, and conferences held in the Muslim world are discussed. This is followed by some discussions on fatwas issued in a British context. The survey is not exhaustive and fuller discussions can be found in Ghaly (8), Albar (5), Abu Zayd (10) and Yaqubi (11). For the purpose of this small study, I have confined myself to looking at material from Sunni Islamic sources. There is a rich plethora of discussion among Shia theologians, which does not constitute the subject of this study. I then supplement this with a small set of qualitative data.

The qualitative data collection is based on a small pilot-study comprising of open-ended interviews with three muftis experienced in bioethical issues conducted during the summer of 2016. A qualitative data analysis program called Nvivo was used to thematically arrange, code and analyze the data. The interview participants were chosen based on their training and their knowledge of Islamic law and theology. The research was approved by the author's departmental ethics committee and full written consent was sought from the interviewees prior to the interview. For the purpose of this article, only three themes are discussed from the coding frame.

The findings of this research confirms Rasheed and Padela's (7) study that if meaningful health behaviour change intervention on the benefit of organ donation through partnering with Muslim scholars is to be successful, there needs to be a paradigm shift in how Muslim scholars discuss the topic of organ donation.

Organ Transplantation Fatwas in the Muslim World

Organ transplantation is a relatively new phenomenon. The modern era of transplantation started in the 1940s with an increased medical interest in cornea grafts (12). The successful transplantation of a kidney in 1954 opened up new life-saving horizons hitherto deemed impossible. These technological advances caught on very quickly in the Muslim world. The first successful renal transplantation took place in Jordan in 1972 (13). Egypt is seen as the 'pioneering' Muslim country in transplant medicine (14). Egyptians pride themselves as the first Muslim doctors to have direct interaction with cornea grafts as early as the 1960s (Ibid., p. 2). A fatwa preserved from 1959 is evidence of this. A charitable organization for the blind called the 'Light and Hope Foundation' sought a religious verdict on founding an eye bank in Egypt. The then Grand Mufti of Egypt, Shaykh Hasan Ma'mun responded to their query by extolling the virtues of such an initiative (2, 14). In issuing the fatwa, Ma'mun treads with care. He is careful not to offend people's sensitivity towards honouring the dead whilst skilfully enumerating the religious and practical needs for an eye bank.

Several high-profile conferences took place from the 1970s onward on the issue of organ donation. A corollary of these international conferences was the birth of a new mode of arriving at religious verdicts known as ijtihad jama'i (collective ijtihad) (15-17). A question posed to the Islamic Fiqh Academy - founded in 1977 and an affiliate of the Muslim World League, Mecca, Saudi Arabia – from its USA office, resulted in a nine-day conference in January 1985 in its 8th session held in Mecca. It was concluded that the evidence for the permissibility of organ donation was more convincing. The proceedings of the conference were published in the first issue of its journal Majallat Al-Majma'at al-Fiqhi al-Islami (3). It declared that live donation is permissible because there is known benefit in it (maslaha), it does not breach the dignity of the human body (ihana) and it is considered a praiseworthy act. However, the declaration also points out that the following conditions must be abided by: (1) The donor should not be harmed, (2) The donation must be taken with consent, (3) It should be the only medical treatment available to save the recipient and (4) There must be a high probability of success rate for both procuring the organ and transplanting it. It also declared that taking an organ from a cadaver donor is a fortiori permissible as long as: (a) the deceased was legally competent when alive; and (b) proper consent was given (3). This high-profile conference became the basis of many subsequent conferences and fatwas like the fatwa issued by the European Council for Fatwa and Research in 2000 discussed below (18).

It will be disingenuous of me to paint a picture that Muslim scholars worldwide were unanimous on the permissibility of organ donation. This is not the case. Many scholars have opposed organ donation for a variety of reasons. However, they are on the whole, a diminishing minority. Famous of them all was the celebrated Egyptian 'Shaykh of the People', Muhammad Mitwalli al-Sha'rawi (d. 1998) who led a huge campaign against organ harvesting in Egypt (19). Sha'rawi's argument was brilliant in its simplicity. It resonated with the sentiments of the lay public. Our bodies do not belong to us; it is a trust endowed to us from God. Organ donation trespasses the acceptable boundaries of ethical mores; he argued. It is sacrilegious and a violation of this trust (14, 19). The language of Sha'rawi's appeal was not rigid and elitist like his fellow colleagues in Egypt. His was an argument which simply wanted the poor religious people of Egypt to connect with God and have faith in Him in the face of misery, poverty and illness. For the Egyptian public, Sha'rawi's fiery brimstone preaching confirmed their anxiety and suspicion regarding the efficacy of organ transplantation. Farmers in Egypt already faced the repercussion of consuming crops treated with pesticide by government contractors in the form of mass renal failure. Furthermore, stories of children kidnapped from orphanages to service organ tourists, and missing eyeballs of dead relatives preserved in state hospitals left a very bitter taste in their mouths. Invasive technological advancements were also viewed as westernization and individualization of Egyptian society and an erosion of traditional, religious and cultural values (14, 19).

The most relevant opposition to organ donation for UK Muslims, given the demographic makeup of Muslims in Britain, comes from scholars from South Asia and their counterparts in different parts of the world (20-25). In his analysis of two fatwas on organ donation: the first on prohibition by the Pakistani Mufti Muhammad Shafi (25) and the latter on permissibility by the then Grand Mufti of Egypt, Shaykh Gad al-Haq, Ebrahim Moosa arrives at the conclusion that the differences between the two fatwas lie in how human dignity is framed:

whether it is devotional imperative (ta'abbudi) or whether it is bound by its meanings and context (mu'amalaat) so that it may change with new contexts (26).

These differences are apertures for deeper systemic and structural differences which include legal formalism (taqlid) vs. legal eclecticism (talfiq), attitude towards the body and its control, the perception of death and dying and an understanding that the body is a miniature cosmography of the status of society at large. Furthermore, South Asian scholars express concern that in the absence of government-supported transplant programs, fatwas on the permissibility of organ donation will legitimize the demand for organ harvesting the supply of which will most certainly come through illegal organ trafficking and black market organ trade (25).

The above discussion on organ donation in the South Asian context should not be understood to mean that scholars from that region in the world are all against organ donation. There are many scholars who argue for the permissibility of both cadaveric and live organ donation. In fact, Khalid Saifullah Rahmani from the Indian Fiqh Academy goes as far as to argue that in life-threatening cases, one is able to buy an organ however does not support the selling of organs (27). While the above observation is true for the state of organ transplantation in developing countries (14, 25, 28), would the same concerns apply to the UK context? How have fatwas issued in the Muslim world impacted on the fatwas of ulama in the UK? Van Den Branden and Broeckaert (29) have already carried out an in-depth study of 70 English Sunni e-fatwas on organ donation and blood transfusion none of which are UK-based. Hence, below I briefly discuss three fatwas specific to the UK only one of which is an e-fatwa.

Organ Donation Fatwas in the UK

Mohammed Ghaly's (8) reading of a fatwa by Zaki Badawi suggests the latter's purposely not engaging or referencing fatwas and studies from the Muslim world was due to the author's eagerness to address the concerns of British Muslims instead of importing from the Muslim world. In 1995, the UK's Muslim Law Council led by Zaki Badawi issued a fatwa of approval for organ donation (30). It was supported by scholars from both Sunni and Shia background and three distinguished lawyers and must have had an impact on the UK medical community, as it warranted notice in the prestigious Journal of Medical Ethics (31). In current government campaign for educating UK Muslims on the benefits of organ donation, the National Health Service still refers back to this fatwa (32). Badawi's fatwa particularly tackled the thorny issue of brain-stem death and concluded based on medical and religious reasoning that harvesting of organs from brain-stem death patients is permissible (30).

A more recent fatwa issue by the European Council for Fatwa and Research (ECFR) in its 6th session in 2000 iterated the declaration of the Islamic Fiqh Academy (IFA) in its entirety (18). The ECFR fatwa fails to mention any of the dissenting views of the IFA conference participants giving the impression that the declaration was wholeheartedly accepted by all (8). For example, one of the presenters at the IFA conferece, Abu Sunnah argued against live organ donation (33). The Saudi Scholar Salih b. Fawzan documented his unease with cadaveric donation. The Saudi Scholar Bakr Abu Zayd remained non-committed (3). The ECFR fatwa is silent on these dissenting views. However, it goes on to make its own declarations, which reflect the particulars of a European context. Out of these, the one most pertinent to the UK context at the moment is the declaration permitting deemed consent as a valid form of consent recognized by the Shari'a. It is unfortunate that the fatwa presents this important point in bullet-form without providing the reasoning why it reached this conclusion. The only other fatwa permitting deemed consent is an old Kuwaiti fatwa issued in 1980. However, that fatwa was rejected both by the Kuwaiti ministry of Health as well as the Kuwaiti Parliament (5).

While the above two fatwas subscribe to a permissive attitude towards organ donation, a more ambivalent position can be observed in a third fatwa by the Indian Deobandi Mufti, Muhammad Ibn Adam al-Kawthari (34). In response to a questioner seeking a fatwa on organ donation, al-Kawthari presents the arguments for both prohibition and permission. He writes,

The views of the contemporary scholars are based upon the general and broad guidelines of Shariah. It is obvious that this will result in difference of opinion, thus no one opinion should be condemned, as the intention of all the scholars is to please Allah, and live a life that is in accordance with Shariah' (34).

Be that as it may, subtle hints can be found for al-Kawthari's preferred position. Al-Kawthari makes it a point to mention that his teacher the Pakistani Mufti, Muhammad Taqi Uthmani decided not to pronounce on the topic given that Uthmani's father; Mohammed Shafi has already presented evidence for its prohibition. Furthermore, al-Kawthari's advice to those who adopt the position of permissibility is indicative of his leaning.

One may follow any of the above two viewpoints, as they are both from great scholars of Islam. If one acts on the view of permissibility, then it would be advisable, as a precautionary measure, to seek forgiveness from Allah (istigfar) and donate something in charity' (34).

From the forgoing brief survey of three UK based fatwas, the following observations can be made: (a) The transnational nature of Islamic bioethical deliberations (8), (b) how authority is constructed, (c) the role of context in shaping the contours of a fatwa. Ghaly argues that further research is required to observe the impact of these fatwas on the Muslim community in the West (8).

Interviews with 3 British Muftis

In addition to looking at fatwas on organ transplantation in the UK context, understanding the views of UK scholars vis-à-vis organ transplantation will help gauge the level of engagement with these fatwas and how authority is constructed. Below are discussions on three themes (organ donation, organ reception and construction of authority) extrapolated from interviews I conducted with three UK muftis during the summer of 2016. The data-set is deliberately small as the results of the interviews are to form the evidence-base for a larger project. All three muftis either are born in the UK or have citizenship status. Given the South Asian background of a sizeable number of UK Muslims, the three muftis chosen for the interviews reflect this demographic background. Two of them conform to the Deobandi strand of Islam and the other to the Barelwi school of thought. Their names have been anonymized to protect their identity and pseudonyms have been used throughout the article.

The two Deobandi scholars, Mufti Abu Zayd and Mufti Abu Bakr, completed the Dars-i Nizami syllabus in a UK Darul Uloom. The Dars-i Nizami syllabus founded by Mulla Nizamuddin (d. 1748) of the Farangi Mahall in India in 1695, comprised of a fine balance between the rational sciences (ma'qulat) and the revealed sciences (manqulat) (35-37). It went through a number of permutations and the final standardised version has been adopted in the 25 or so Darul Ulooms in the UK. After completing their UK studies, the two Deobandi Muftis enrolled on to fatwa training programmes in Pakistan. Mufti Aslam on the hand studied the Dars-i Nizami and other modules privately with scholars in the UK and abroad (not South Asia) including a stint in the Middle East. This is as much as can be said about the scholars generally. Further particulars are below. After completing his fatwa course, Mufti Abu Zayd went into researching and issuing fatwas formally. He also worked as a hospital chaplain in a multifaith team and came face to face with ethically challenging situations in his everyday work. Mufti Abu Zayd sits on the advisory panel on a number of Shari'a boards and has been consulted by the UK Government on a number of issues related to Islam and public health. Mufti Aslam is a trained medical doctor and author. He has been consulted on several occasions by Muslim and non-Muslim groups to discuss Islam and health related issues. Mufti Abu Bakr is the youngest of my interviewees. After graduating from the mufti training programme, he became a full-time imam in a mosque and has ever since been doing so. His exposure to some of the real life ethical challenges is limited to what people divulge to him by way of seeking religious guidance.

Perception on Donating Organs

The first of the three themes identified in the coding frame is their perception on donating organs as opposed to receiving one. One of the main arguments used against the permissibility of organ donation by Sha'rawi and Shafi is that humans are not the owners of their body (25). It is given to them by God as a trust which is to be used responsibly but with limited autonomy. All three interviewees felt that in the case of a living donor, God's ownership is not violated by donating an organ. This came with the caveat that risk is minimal to the donor and that she can lead a healthy life after the surgery.

In the case of cadaver donation, their views were not in unison. Abu Bakr deemed it impermissible to retrieve organs from dead people. Abu Zayd believed that organ donation is only permissible from 'non-beating heart donors' but not permissible from brain-stem death patients. Finally, Aslam maintained that all forms of organ retrieval are permissible from dead donors.

What is the underlying reasoning for their differences? Abu Bakr's argument anchors on two points. The first is the common argument that the body is a trust from God who has loaned it to humans to use with certain restrictions. He argues that to ingest prohibited food items like pork is deemed as a violation of this trust. In similar vein, suicide and donating organs is also a violation of this trust. For Abu Bakr the extent of fair-use of the body terminates with death.

This argument betrays circular reasoning for he is presenting as evidence the very thing he is trying to prove. It is also contradictory since Abu Bakr believes that blood transfusion and live organ donation is allowed. When queried about this contradiction he responded that his main hesitation with cadaver organ donation hinges on a Prophetic statement that the dead feel pain. While a living person can alleviate pain through aesthetic, he argues, what pain control measures are available for the deceased? He says,

How can you be sure that you won't feel pain and therefore regret your decision? On what religious text are your basing your opinion on that you will be okay in front of Allah on the day of Judgment. It's not just an ethical issue, that if you donate you have mercy and if you do not donate then you don't have mercy. Sometimes our Shari'a is hundred percent not understood by logic, it's what God has stipulated for us. (Interview with Abu Bakr interview August 2016).

Abu Bakr is taking a cautious approach. Any action apparently violating the overall sanctity of the human bestowed upon her by God through scriptural mandate requires divine writ to overrule it. In the absence of any such scripture the status quo must be maintained. However, the real question is whether organ donation fares as a concrete example of violation of this sanctity? Furthermore, should metaphysical issues such as pain in the spiritual realm need to bear down on legal issues?

For Abu Zayd, the question of ownership of the body is a non-issue. He believes that the entire discussion on organ donation anchors on how human dignity is perceived. However, what is interesting about Abu Zayd's view is that he does not believe that in this particular instance the Shari'a defines dignity or what constitutes a breach of it. For him, the matter is left to the Muslim society (urf) to decide. He says,

What I would say, from my reading of the whole area, all dalail (evidence) for and against the rest of it boils down to the dignity of man… So a lot of that (when the Qur'an and hadith are silent) it tends to be left on urf (society). So an urf changes with time and place. So, something that was deemed to be dishonorable yesterday could be honorable today; there are examples of this. So, the question is, 'is organ donation today seen to be honorable or dishonorable, does it desecrate the body or does it not'? I think when it comes to live donors, whether it's bone marrow or whether its kidney, if you hear that somebody has donated their kidney to their brother, for example, the natural reaction to that is not one of horror but one of amazement and admiration, wow! Nobody looks at it and says "Oh my God what has he done" that tends to be the general perception. That's what I would say for live donors. It's not viewed as dishonorable. … Then if you take that one step further, if you take a kidney and you take other organs, the heart, the liver, the lungs etc. when does that kind of become desecration? And I tend to ask the question, if you consider this is your mother who has died, and they are going to remove her heart, lungs etc. how does one feel about that? When does it reach a level where it becomes desecration? Okay what about external features, nose, eyes, and cornea. Is it just internal features or external features? That is an area where I need to conduct further research. (Interview with Abu Zayd July 2016).

Abu Zayd's position is interesting since it is suggestive of the possibility that as the Muslim community becomes familiar with the benefits of organ transplantation and reaps its benefits, it will be more susceptible in not viewing organ harvesting as aggression towards the person and be more accepting of it. For him, the Muslim community is not ready to palate any form of invasive meddling with a dead body.

As for why Abu Zayd does not pronounce a fatwa of permissibility for brain-stem death donation. He argues that he is not convinced that brain-stem death is real death since it does not conform with Islamic understanding of death, which is the exiting of the soul from the body marked by a complete cessation of cardiopulmonary activity (38). Furthermore, it is disputed among medical ethicist whether brain-stem death is real death and certain psychosomatic activities similar to that of a healthy person remains even when the person is deemed brain-stem dead (22, 39).

Mufti Aslam had the most intriguing argument. Commenting on brain-stem death, he argues that trying to pinpoint the exact moment of death is a red herring. The departing of the soul from the body is purely a metaphysical issue which cannot be gauged with any machine. So, the only thing at our disposal is legal death. He maintains that in the life of a person there will arrive a point of no return when widespread cellular death occurs, and no amount of medical intervention will be able to resuscitate the person. 'The light is on but no one is at home.' It is a machine which is artificially pumping oxygen around the body and keeping the heart beating. However, there is no consciousness and the person is no more.

Through the use of legal logic, he develops a strong case for retrieval of organs due to death caused by neurological criteria. He argues that this is the exact moment when scholars permit the removal of assisted ventilation devices (40). Moving from this premise, he extends the logic by arguing that lungs are the internal ventilators of the body. If one is able to stop the ventilator, then why not take the lungs out which are the internal ventilator, he argues. Clearly, Aslam does not seem to see any qualitative difference between switching off the life-support machine and procuring an organ to stop the breathing. One may argue that one is passive non-invasive termination of the body and the other is active invasive ending of life and therefore warrants a distinction.

Perception on Receiving Organ and Necessity (darura)

The forgoing discussion was from the point of view of the donor. What about from the point of view of the recipient? All three scholars were of the opinion that it is permissible due to the necessity (darura) of saving one's life. The darura principle is invoked in order to override an otherwise categorical prohibition in scripture (41). However, there is significant disagreement in how darura is interpreted and applied. Is it an actual necessity or can it be described as potential necessity? For example, an organ for instance may not immediately develop in to an actual life-threatening condition. However prolonged malfunction may have a knock-on effect. In the end a cumulative condition can be described as actual life threatening situation as a result of multiple organ failures (26).

For Abu Bakr it is always actual necessity as opposed to potential necessity which counts. He side-stepped my question on whether it is permissible to use organs from cadaver donors in an actual life-threatening situation. He argued that it is permissible for the patient to receive the organ without questioning its provenance. In other words, he accepted the demand without commenting on the supply.

Both Abu Zayd and Aslam are of the opinion that necessity is both actual as well as potential. Abu Zayd says,

Now if you look at the terminology of the fuqaha (jurists), one is the case of idtirar (emergency), and idtirar tends to be used where a life is threatened. They are all about saving a life. Some say that darura is synonymous with idtirar so it has to be life threatening. But if you look at the usage of the fuqaha, its tends to be wider application of darura. And so it's not only about threatening of life. For me a vital function of the body will also be darura. You can call it what you want. Qualifying need would be where you are restoring the normal function of a body or saving a life. Saving a life, okay, but restoring the function of a body. So for example in this situation nowhere you have a person who's had diabetes and if he was to have a transplant, for me that will qualify as a darura already, irrespective of what is to happen in the future. (Interview with Abu Zayd, July 2016)

Aslam further extends this argument. He poses the question whether darura is about immediacy, understood as 'time bound' or whether darura is about the 'certainty of occurrence'. He argues for the latter option and laments that thinking about necessity as immediate and time-bound is individualization of an issue without looking at the greater picture. By way of example he mentions a scenario where a group of people were starting off on a desert expedition. At the entrance to the desert they find a casket of beer. Would it be permissible for the group to take this casket of beer with them just in case their water runs out? Aslam's reasoning is that it's about the immediacy that brings about a certainty. Moving on from this example he makes the point that once one looks beyond their individual selves they will see that that there is a perpetual need for organs. He says that in the life-time of a preserved cornea-tissue, statistically there is a hundred percent chance that someone will need that tissue. The implication of Abu Zayd and Aslam's opinion is far reaching. If darura is to include potential necessity in addition to actual necessity, this opens up doors to legitimizing organ banks.

The darura argument is invoked when there is a tension between a specific command of God (nass) and His general purpose (hikma) extrapolated from the specific text (41). By default, the over-ridden text is one of prohibition and the darura-principle is invoked in order to temporarily legitimize the action. For Aslam, to start the discussion on organ donation from the position of darura is a false premise. He argues that since there is statistical certainty that someone somewhere will always require an organ, the default position should shift from one of accommodation to that of permissibility from the outset.

Aslam complains that the advocates of organ donation are bad at promoting their position by classifying it as a mere permissibility. Out of the five legal norms (obligatory (wajib), recommended (mandub), permissible (mubah), disliked (makruh) and prohibited (haram)) used in Islamic legal theory to classify all actions by the legally competent person (42), organ donation oscillates between the prohibited (haram) and neutral (mubah/halal) positions with all scholars maintaining prohibition as the default position. Aslam makes the point that in the mind of an ordinary person, considering the emotional and psychological tension between an act that may be prohibited or merely permissible, it is always the prohibited that tilts the scale. He argues that since there is widespread need of organs on the level of certainty arrived through statistical data; no longer can the issue be viewed through strict legal lens. An argument from virtue-ethics need to be made where the default position starts from 'permissible' moving towards 'recommended', which will include acts of charity, acts of worship, acts of preservation of humanity and gradually crouch towards the 'obligatory'. Aslam maintains that organ donation does not only fulfil the broader objective of the Shari'a relating to preservation of the self, but interestingly it also fulfils a second objective related to the preservation of religion. The broader objectives of the Shari'a are universal principles the preservation of which is the raison d'être of the Shari'a (Opwis 2005, 2017). They include: the preservation of religion, life, honor, rational faculty, wealth and progeny. All of these principles have further categorization depending on their urgency and importance. These are known as the levels of gravity (maratib al-masalih): They are vital necessities (darura), valued interest (hajah) and supplementary interests (tahsin) (Opwis 2017, 10). Aslam argues that if one was to be given a second chance to live through receiving an organ, one will have many more years to find God or to repent from their sins. It is only when such forceful ethical claims are made that Aslam believes people will start responding to organ donation properly.

Organ Transplantation and Religious Authority

The above two themes give the impression that a compelling and convincing ethico-legal discussion may prove to be decisive when it comes to deciding whether organ donation and transplantation should be allowed or not. However, the two British fatwa discussed above (The ECFR 2000 and al-Kawthari 2004 fatwas) demonstrate the transnational characteristics of such fatwas and how UK ulama are relying on the fatwas issued in the Muslim world for guidance. The interview participants also agreed with this view and accepted that at least for the British ulama and by extension, the UK Muslim community it is not theological arguments that will sway their opinions but what elderly authorities (akabir ulama) from their sphere of influence have pronounced on the issue. Commenting on the efficacy of international Islamic law organizations for UK Muslims, Abu Zayd says,

To be honest for the people from the Indian Sub-continent, the Majma'at al-Fiqhi al-Islami can say whatever they want, but if Mufti Taqi Uthmani says one thing the whole of the sub-continent is fine with it. Do you understand. So, it's who you have trust in your particular manhaj (religious affiliation). (Interview with Abu Zayd, July 2016).

The other two interviewees concurred with this view. Abu Bakr went to the extent to say that if Mufti Muhammad Taqi Uthmani issued a fatwa of permissibility for organ donation, he and many other Deobandi scholars residing in the UK will immediately follow suit.

One of the reasons for this may be the lack of expertise or lack of confidence among UK ulama to carry out intensive research on a local level, which may overturn the fatwas issued in the Muslim world. In answer to my question relating to who the most qualified ulama on bioethical issues are in the UK, Aslam responded that bioethics is a massively underdeveloped field and the UK ulama do not have access to proper resources. He argued that the ulama in the UK are too general in their knowledge and there needs to be a professionalization of the ulama class where they can specialize in specific areas of research. Abu Zayd also said something along similar lines,

It's all second hand, third hand information, its exposure, so and so has written this. They won't have any books on medical ethics. […] Unless they are going to academia and developing their expertise and have some kind of influence otherwise, they don't go past Bukhari and the sad thing is if the whole system is like that it stops there and that's it. (Interview with Abu Zayd, July 2016).

Conclusion

One of the limitations of this study is the small data-set employed to make observations. The data captured three differing views towards organ donation and two towards organ reception. Further research is required to ascertain whether this is a trend among UK ulama. Furthermore, a more extensive data-set will reveal if there is any shift or leaning towards any one particular view. By thematically coding and analyzing the data using Nvivo, what immediately became apparent is the non-scriptural arguments that respondents made. In the absence of clear scriptural evidence, the respondents employed a form of eisegesis where they projected their understanding of what it means to be a human, and how death and dying is to be conceived. Their personal biography is a factor in their decision making. Fatwas and religious opinions are socially constructed to fit a particular understanding of the human vis a vis God and his relation to religion. At times this understanding emanates from an anxiety over pronouncing on something about which the Shari'a has provided no direct guidance. Other times it's related to how society translates dignity and desecration. A narrowly scientific understanding of death is presented as a counter-argument to its metaphysical aspects. Looking beneath the surface of the discussion on organ donation, one realizes that it falls at the intersection of the ethico-legal and the anthropological. What appears to be, at first blush, scripturally informed arguments are in reality filtered through certain sociological attitude towards death and dying.

The sociologist Bryan Turner (43) argues that people conceptualize the body in two ways: the first is through embodiment i.e. human beings have a body and possess a body; and secondly through enselvment that human beings are a body. The idea that humans have bodies is based on a Cartesian distinction between the soul/person and the body, which regards the body as simply a machine directed by the instructions of the soul (44). The body as a machine and therefore a conglomeration of disparate interchangeable body parts is a view compatible with organ transplantation and one generally advocated by certain groups such as doctors (45). However, studies have shown that the more integrated body parts are to the idea of personhood, the more sacred they are considered and less likely to be donated. The idea is in part based on how we view our 'body image' which may not necessarily have any relation to biological facticity but can be influenced by history, tradition and custom. In Islam there is an intimate connection between the body and the soul and the belief that both body and soul will be resurrected on Judgment Day, which explains why there is much anxiety around the subject of organ donation (46).

In addition to the above, certain fatwas have had an influential grasp, first and foremost on British ulama and by extension on the UK Muslim community. For UK Deobandi ulama, Shafi's 1967 fatwa issued in Pakistan is viewed as the final say on the subject which can only be overturned by an authority of similar credibility like his son Taqi Uthmani. The Barelwis take as their authority the fatwa of Mufti Akhtar Reza Khan (23) the great grandson of the veritable founder of the movement Ahmad Reza Khan. If any successful intervention is to be had by employing the services of UK ulama, a number of steps need to be taken on the theological front (as opposed to the community engagement front). Step 1 is to highlight the local as opposed to the transnational nature of fatwas issued in the Muslim world. A thorough re-reading and interrogation of fatwas issued on the topic in the Muslim world need to be undertaken. These are to be studied in such a way that they are not only filtered through the lens of theology and law, but also by investigating the cultural, social and political contexts in which these fatwas were written in and then decide whether they mirror their ground reality in the UK or not.

Step 2 will include ruminating on the style of delivery. What is gleaned from Abu Bakr and Abu Zayd's interview data is how society is to view the human body. Since death and dying are delicate subjects and handling a deceased family member is fraught with emotions, an approach that is sensitive to this will go a long way. Rigid scientific arguments like Aslam's position on brain-death may fall on deaf ears, however his argument for a shift in the discourse on organ donation may prove to successful. If proponents of organ donation are to get traction for their view, they radically need to change their discourse from one of mere permissibility (mubah) to a nomenclature which connects with the everyday concerns of people using non-technical simple language; a language that argues for organ donation from the point of view of not only law and ethics but virtue, charity and reward.

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