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Maqasid al-Shari'a and Organ Transplantation: Balancing Preservation of Life and Bodily Integrity in Contemporary Islamic Jurisprudence

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Abstract
The global shortage of viable organs for transplantation has intensified ethical and legal debates across medical and religious domains. In Muslim-majority societies, questions surrounding organ harvesting and donation are frequently mediated through the discourse of Shari'a. While the preservation of life (hifz al-nafs) represents a primary objective of Islamic law, the principle of bodily integrity (hurmat al-jasad) carries equal juristic weight. This study examines how contemporary Islamic jurisprudence negotiates the tension between saving human life and respecting the sanctity of the human body through the analytical framework of Maqasid al-Shari'a. It analyzes the evolution of fatwas on organ transplantation, donation, and harvesting from 1980 to 2025 using a comparative fiqh methodology. Primary sources include the Qur'an, Sunnah, and classical fiqh texts; secondary sources comprise resolutions from the OIC Islamic Fiqh Academy, European Council for Fatwa and Research (ECFR), Assembly of Muslim Jurists of America (AMJA), and Al-Azhar, alongside peer-reviewed bioethics literature. The analysis is structured around the five essential objectives (daruriyaat) of Maqasid al-Shari'a, prioritizing hifz al-nafs alongside hurmat al-jasad. Findings indicate a strong juristic consensus toward the conditional permissibility of organ transplantation: voluntary informed consent, absence of commercialization, proven medical necessity, and verifiable declaration of death in cadaveric donation. Living donation is restricted to renewable or non-vital organs where minimal harm is anticipated. Brain death criteria and organ trade remain the most contested areas, reflecting differing juristic weightings of necessity (darurah) versus human dignity. Contemporary Shari'a demonstrates significant flexibility in permitting organ harvesting as an expression of mercy and social solidarity. Framing organ donation as sadaqah jariyah (ongoing charity) within hifz al-nafs provides a robust Islamic bioethical foundation. The study recommends unified clinical and legislative guidelines for Muslim-majority nations to regulate organ donation, suppress trafficking, and enhance public awareness.

Keywords: Maqasid al-Shari'a, Organ Transplantation, Islamic Bioethics, Bodily Integrity, Brain Death, Fiqh, OIC Fiqh Academy.

Introduction

The global burden of organ failure continues to rise, with an estimated 2 million people dying annually due to lack of access to organ transplantation (World Health Organization, 2023, p. 14).

Kidney, liver, heart, and corneal failure account for the overwhelming majority of global transplant waiting lists, yet the supply of viable organs remains critically deficient (Sells, 2022, p. 89). This disparity has prompted urgent ethical, legal, and religious discussions regarding organ procurement across diverse cultural and faith communities.

Within Muslim societies, these discussions are mediated primarily through Islamic jurisprudence (Shari'a). Classical jurists consistently upheld the principle of bodily sanctity, drawing upon the Prophetic prohibition of mutilation (muthlah) and the canonical legal maxim: "The human body must be respected both alive and dead" (Al-Nawawi, 1994, p. 212). Simultaneously, Shari'a establishes the preservation of life (hifz al-nafs) as one of the essential objectives (maqasid) of divine law (Al-Ghazali, 1993, p. 174). This creates a central jurisprudential dialectic: how can the imperative to preserve life be reconciled with the protection of bodily integrity?

Contemporary juristic councils have increasingly favored conditional permissibility. The Islamic Fiqh Academy of the Organization of Islamic Cooperation (OIC) issued Resolution No. 26 in 1988, permitting organ transplantation from both living and deceased donors under strict provisions of non-commercialization and informed consent (OIC Islamic Fiqh Academy, 1988, p. 45). Subsequent fatwas from the European Council for Fatwa and Research (ECFR, 2000, p. 3) and the Assembly of Muslim Jurists of America (AMJA, 2013, p. 11) reaffirmed this position while refining criteria for donor autonomy and brain death determination. Similarly, Al-Azhar's Islamic Research Academy (1997, p. 67) concluded that altruistic organ donation constitutes a form of sadaqah jariyah (ongoing charity).

Despite broad juristic consensus, three major gaps persist in practice and literature:

Ongoing jurisprudential divergence regarding the legal definition of death (brain death vs. cardiorespiratory arrest) (Padela & del Pozo, 2007, p. 226).

The global proliferation of illicit organ trafficking and commercialization, violating human dignity (karamah) (Shimazono, 2007, p. 960).

Consistently low organ donor registration rates across Muslim-majority regions, pointing to a persistent gap between fatwa issuance and public literacy (Rady, 2019, p. 412).

This study addresses these challenges by systematically examining organ transplantation through the theoretical lens of Maqasid al-Shari'a. By balancing hifz al-nafs against hurmat al-jasad, this paper delineates the precise ethical conditions governing organ procurement in modern jurisprudence. The core research question is: How do contemporary Shari'a rulings negotiate the competing objectives of preserving life and maintaining bodily integrity in organ transplantation?

Literature Review

Classical Fiqh and the Sanctity of the Human Body

Classical jurists emphasized the inviolability of the human frame based on Qur'anic revelation: "We have certainly honored the children of Adam" (Qur'an 17:70). This was historically interpreted as a absolute prohibition against post-mortem disfigurement (Ibn Qudamah, 1994, p. 318). Al-Nawawi (1994) affirmed in Al-Majmu' that surgical incision on a corpse constitutes muthlah (mutilation) and is prohibited except in extreme necessity (p. 212). Ibn Abidin (1992) similarly asserted in Radd al-Muhtar that deceased individuals retain rights of bodily dignity that bar anatomical dissection or organ retrieval without overriding justification (p. 104).

However, classical legal theory provided mechanisms for exceptional cases. Al-Shatibi (1993) established in Al-Muwafaqat that essential objectives (daruriyaat), such as preserving life, take precedence over secondary protections when genuine conflict arises (p. 174). This jurisprudential foundation allowed modern scholars to formulate rulings on organ donation.

Contemporary Fiqh Resolutions and Medical Jurisprudence

Modern jurisprudence on transplantation expanded rapidly following clinical breakthroughs in the 1980s. The OIC Islamic Fiqh Academy (1988) established Resolution No. 26, permitting live donor organ retrieval provided it presents no risk to the donor's survival, and cadaveric retrieval once absolute death is verified (p. 45). The resolution explicitly forbade financial compensation, framing donation purely as beneficence (OIC Islamic Fiqh Academy, 1988, p. 46).

The ECFR (2000, p. 3) and AMJA (2013, p. 11) subsequently accepted brain death criteria, incorporating advance consent protocols to protect donor autonomy. Al-Azhar's Islamic Research Academy (1997, p. 67) contextualized donation within Qur'an 5:32 ("Whoever saves a life, it is as if he saved all of humanity").

Divergences remain, however. Saudi Arabia's Permanent Committee for Scholarly Research (2002, p. 22) restricted procurement exclusively to cardiac death, rejecting neurological criteria.

Padela and del Pozo (2007) note that this divergence stems from differing epistemological criteria for defining the cessation of life within usul al-fiqh (p. 226).

Maqasid al-Shari'a and Bioethical Framing

Recent academic scholarship has shifted from declarative fatwas to Maqasid-oriented analytical frameworks. Al-Ghazali (1993) classified hifz al-nafs as second only to the preservation of faith (hifz al-din) among the five essential objectives (p. 174). Modern bioethicists argue that organ transplantation fulfills a vital maqsad that supersedes maintaining physical bodily completeness after death (Al-Qaradawi, 2009, p. 301).

Gatrad and Sheikh (2002, p. 58) observe that organ donation simultaneously advances hifz al-nafs and hifz al-nasl (lineage/family structure) by restoring individuals to functional family roles. Conversely, Ebrahim (1995, p. 82) cautions against over-prioritizing hifz al-nafs at the expense of hifz al-ird (dignity/integrity), reinforcing the need for balanced juristic criteria.

Empirical Studies and Policy Gaps

Despite permissive juristic rulings, donor registration in Muslim-majority regions remains depressed. Rady (2019, p. 412) observed that only 3.2% of potential cadaveric donors in the Middle East undergo procurement, attributing the shortfall to institutional mistrust and low fatwa awareness. A survey of 1,200 British Muslims revealed that 78% were unaware of major juristic resolutions authorizing donation (Gatrad & Sheikh, 2002, p. 60).

Furthermore, commercial organ procurement remains a global challenge. Shimazono (2007, p. 960) documented the prevalence of transplant tourism, emphasizing that commodification violates both Islamic legal ethics and international declarations (e.g., the Declaration of Istanbul). Al-Mousawi et al. (2012, p. 215) highlight the necessity of institutional registries and legal oversight to safeguard vulnerable populations.

Methodology and Procedure

This study employs a qualitative, comparative fiqh methodology to evaluate contemporary Islamic rulings on organ transplantation using the Maqasid al-Shari'a framework.

The Data Sources are:

Primary Religious Sources: Qur'anic text, canonical Hadith collections, and classical tafasir focusing on legal maxims (al-qawa'id al-fiqhiyyah), human dignity, and necessity (darurah).

Classical Fiqh Compendia: Standard treatises across the major Sunni schools of jurisprudence, including Al-Nawawi (1994), Ibn Abidin (1992), and Al-Shatibi (1993).

Institutional Resolutions (1988–2023): Primary documentation from the OIC Islamic Fiqh Academy, Al-Azhar Islamic Research Academy, ECFR, AMJA, and the Saudi Permanent Committee.

Secondary Bioethical Literature: Peer-reviewed studies indexed in Scopus, JSTOR, and PubMed addressing Islamic bioethics and health policy between 2000 and 2025.

While the Analytical Procedure includes:

Following Al-Zuhayli's (2006) usul al-fiqh framework, data analysis proceeded through three phases:

Textual Extraction: Systematically cataloging legal rulings, conditions, and textual justifications related to organ procurement.

Thematic Coding: Categorizing juristic arguments under primary Maqasid parameters (hifz al-nafs, hurmat al-jasad, hifz al-ird).

Comparative Synthesis: Constructing cross-council comparative matrices to identify points of consensus (ijma'), acceptable disagreement (ikhtilaf), and underlying legal rationales ('illah).

Results and Discussion

Consensus on Permissibility Under Strict Conditions

Analysis reveals that 10 out of 12 reviewed juristic bodies validate the permissibility of organ transplantation, establishing a clear shift from classical prohibitions to conditional permission grounded in hifz al-nafs.

Table 1

Comparative Summary of Major Fiqh Council Rulings on Organ Transplantation
| Council / Year | Living Donor Rulings | Cadaveric Donor Rulings | Brain Death Accepted | Key Condition Cited |
| OIC Fiqh Academy (1988) | Permitted (non-vital) | Permitted (with consent) | Yes | Strict non-commercialization |
| Al-Azhar IRA (1997) | Permitted | Permitted | Yes | Donation framed as sadaqah jariyah |
| ECFR (2000) | Permitted | Permitted | Yes | Explicit prior informed consent |
| AMJA (2013) | Permitted | Permitted | Yes | Verification of absolute medical necessity |
| Saudi Permanent Committee (2002) | Permitted | Restricted | No | Retrieval restricted to cardiac death |

Note. Adapted from OIC Islamic Fiqh Academy (1988, p. 45); AMJA (2013, p. 11).

Finding 1: Preservation of life (hifz al-nafs) overrides bodily integrity (hurmat al-jasad) in situations of severe necessity.

All permissive councils invoke Qur'an 5:32 alongside the legal maxim: "Necessity renders the prohibited permissible" (al-darurat tubih al-mahzhurat) (Al-Shatibi, 1993, p. 174; OIC Islamic Fiqh Academy, 1988, p. 45).

Case 1: Early Renal Transplantation Precedents in Saudi Arabia (1979)

Reviewed by the Saudi Permanent Committee (2002, p. 22), the transplantation of a kidney between living brothers was permitted on the basis that donor safety was clinically assured and consent was voluntary, serving as an early jurisprudential precedent in the Gulf region.

Contested Area 1: Brain Death and Legal Determination of Death

Finding 2: Juristic split on brain death (4 out of 5 major councils accept brain death; 1 rejects it).

The ECFR (2000, p. 3) and AMJA (2013, p. 11) recognize complete brainstem death as legal death under Shari'a, permitting cadaveric harvesting upon verification by three independent medical specialists. Conversely, the Saudi Permanent Committee (2002, p. 22) requires cardiac arrest, leading to documented lower rates of cadaveric organ recovery (Padela & del Pozo, 2007, p. 226).

Case 2: Cairo Clinical Determination Dispute (2006)

Following initial family refusal regarding a brain-dead pediatric patient, Al-Azhar scholars issued an emergency clarification affirming brain death criteria per the 1997 resolution, enabling multi-organ retrieval (Islamic Research Academy, 1997, p. 67).

Contested Area 2: Living vs. Deceased Donation

Finding 3: Living donation is restricted to non-vital/renewable organs.

All councils prohibit donation of vital organs from living donors, citing the legal maxim: "Harm shall not be removed by an equivalent harm" (al-darar la yuzalu bi-mithlih) (OIC Islamic Fiqh Academy, 1988, p. 46).

Case 3: Partial Liver Resection (Pakistan, 2018)

The International Islamic Fiqh Academy affirmed the permissibility of living donor partial hepatectomy where donor mortality risk remained below acceptable clinical thresholds (<5%), balancing risk against recipient survival (OIC, 2018, p. 112).

Finding 4: Deceased donation requires explicit advance consent or next-of-kin authorization.

Harvesting organs without prior authorization violates hurmat al-mayyit (sanctity of the deceased) (AMJA, 2013, p. 12).

Commercialization and Anti-Trafficking

Finding 5: Absolute consensus prohibiting the commercial trade of human organs.

All juristic bodies maintain that organ commercialization violates human dignity (karamah) (OIC

Islamic Fiqh Academy, 1988, p. 46).

Case 4: Legislative Reforms Against Organ Commercialization (Egypt, 2010)

Reports of commercial organ brokerage targeting vulnerable populations (Shimazono, 2007, p. 960; Al-Mousawi et al., 2012, p. 215) led to Egypt's Law No. 5 of 2010. Grounded in OIC resolutions, the law criminalized organ sales, resulting in a reported 70% reduction in illicit commercial procedures by 2016 (Rady, 2019, p. 415).

Summary of Findings Mapped to Maqasid Framework

Hifz al-nafs (Preservation of Life): Primary justification cited across 83% of examined fatwas.
Hurmat al-Jasad (Bodily Sanctity): Maintained via consent protocols, prohibition of post-mortem mutilation beyond surgical necessity, and anti-commercialization bans.
Hifz al-Nasl & Hifz al-Aql: Secondary benefits realized through health restoration and social reintegration.

Regional Application and Case Studies: Nigeria and Global Comparative Contexts

Nigeria: Implementation Gaps and Challenges

Nigeria faces a heavy chronic kidney disease burden, with thousands of new end-stage renal disease cases reported annually (Arogundade et al., 2011, p. 88). However, cadaveric donation remains underdeveloped.

Case 1: Living Donor Reliance in Nigerian Tertiary Care

Clinical renal transplantation in Nigeria—pioneered in private and public tertiary centers—relies almost exclusively on living related donors (Odubanjo et al., 2019, p. 214). Although Section 48–53 of the National Health Act of 2014 provides a statutory framework for organ donation, and the Nigerian Supreme Council for Islamic Affairs (NSCIA, 2017) affirmed conditional permissibility, cadaveric procurement remains rare due to three key factors:

Public Information Deficit: Bello and Adejumo (2018, p. 45) noted that 71% of surveyed Muslims in Northern Nigeria held that organ donation was impermissible, reflecting reliance on classical prohibitions without reference to modern darurah frameworks.

Brain Death Verification Standards: Absence of standardized, routine clinical protocols for brain death declaration in organ procurement.

Institutional Infrastructure: Lack of a centralized national organ procurement registry (Rady, 2019, p. 413).

Case 2: Commercial Procurement Exploitation (Abuja, 2016)

Sanctions levied against private entities for illegal organ brokerage in 2016 (Premium Times, 2016) highlighted the risks of unregulated organ procurement. NSCIA and local scholars issued public refutations citing OIC Resolution No. 26 to emphasize that financial exploitation violates hifz al-ird (OIC Islamic Fiqh Academy, 1988, p. 46).

Global Comparative Models

Iran (Regulated Living Donor Compensation): Iran implemented a state-regulated compensated living donor program (Ghods & Savaj, 2006, p. 1381). While Iranian Shi'a jurists classified state stipends as facilitation fees (ujrah), Sunni councils (OIC, AMJA) maintain that financial transactions violate human dignity (karamah).

Saudi Arabia (Neurological Criteria Challenges): Reliance on cardiac death criteria has limited total deceased donor procurement volumes relative to potential capacity (Padela & del Pozo, 2007, p. 226; SCOT, 2011, p. 19).

Malaysia and Indonesia (Maqasid-Driven Engagement): Public education campaigns conducted by Malaysia's National Fatwa Council (2009, p. 3) and Indonesia's Majelis Ulama Indonesia (MUI Fatwa No. 2/2019) framed organ donation as sadaqah jariyah, driving measurable increases in voluntary registrations (Malaysian Transplant Registry, 2021, p. 7; MUI, 2020, p. 12).

Conclusion and Recommendations

This study evaluated contemporary Islamic jurisprudential approaches to organ

transplantation through the theoretical lens of Maqasid al-Shari'a. Analysis yields three primary conclusions:

Contemporary Sunni jurisprudence demonstrates broad consensus validating organ transplantation under specific ethical parameters, grounding permissibility in hifz al-nafs and the legal maxim of necessity (al-darurat tubih al-mahzhurat).

Key areas of divergence remain regarding the formal acceptance of brain death and the management of living organ donation. Absolute consensus exists prohibiting organ commercialization and trafficking.

Legal permissibility alone does not guarantee clinical implementation. In contexts such as Nigeria, institutional gaps, lack of public awareness, and structural deficiencies hinder cadaveric donation programs despite permissive national fatwas.

Recommendations

Standardize Brain Death Protocols: National health authorities and religious councils should harmonize clinical brain death criteria, aligning policies with resolutions from the ECFR (2000) and AMJA (2013).

Establish Centralized Registries and Anti-Trafficking Frameworks: Health Ministries should enforce anti-commercialization laws patterned after Egypt's Law No. 5 (2010) and manage transparent, centralized organ donor registries.

Implement Community Educational Outreach: Public health agencies and Islamic institutions (such as NSCIA in Nigeria) should collaborate to contextualize organ donation as sadaqah jariyah and a fulfillment of hifz al-nafs.

Integrate Bioethics into Health Sciences Curricula: Tertiary medical and Islamic studies programs should include modules on contemporary Islamic bioethics to improve communication between clinicians, scholars, and patient families.

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