

# CRIMINAL POLICY REGARDING THE RULES AND GUARANTEES RELATED TO HUMAN ORGAN TRANSPLANTATION: A COMPARATIVE ANALYTICAL STUDY

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## Abstract:

Human organ transplantation has emerged as a method of treatment, and in light of the current medical progress, legal systems have had to strive for reconciliation and balance between conflicting interests to achieve public benefit, in a way that guarantees the private interests of the living donor, his family after his death, and the recipient who hopes to recover from his illness. This will only be achieved by preserving the inviolability of the human body and criminalizing all types of assault that may affect it, whether alive or dead. This is evident in the criminal legislation plan, which is concerned with ensuring the necessary criminal protection for the sanctity of the body from tampering with what prevents it from being complete. Therefore, human organ transplantation operations are considered an exception to the principle of prohibiting disposal of the human body, and therefore it is not permissible to tamper with the human body except for health considerations. Human organ transplantation operations are considered legitimate cases of tampering with the human body, but on the condition that certain controls are available related to the necessity of these operations being subject to public order and the necessity of adhering to its conditions.

This research aims to clarify the controls and rules followed by the criminal policy in the processes of transferring and transplanting human organs. To demonstrate this, the research methodology followed the comparative analytical approach by presenting the provisions of Islamic jurisprudence and the Saudi and Egyptian systems regarding human organ transplantation.

The study reached several results, perhaps the most prominent of which is that the Saudi and Egyptian systems regulate the provisions of donation and will and criminalize the sale of organs.

At the end of the research, the researcher recommended that the Saudi system make a regulatory amendment to Article (5/4) by adding the word recipient (donee).

**Keywords:** Rules, Guarantees, Organ transplantation.

## INTRODUCTION

All praise belongs to Allah alone. And peace and blessings be upon our Prophet Muhammad, who has been sent as a mercy to mankind. As the Almighty says in His Holy Book: “For that cause We have prescribed to the children of Israel that whoever kills a soul, unless it be for another soul or for violence in the land, then it is as though he had killed mankind altogether; but whoever saves one, it is as though he saved mankind altogether.” (Quran 5:32) The Prophet, may Allah bless him and grant him peace: “Indeed, Allah has sent down the disease and its medicine, and He made every disease have a cure, so seek treatment, and do not seek treatment with that which is haram.” (Hadith).

On this basis and because of rapid medical progress. Human organ transplantation has become a cure. It is within the blessings bestowed upon us that science has made it possible to transfer organs from one person to another. So that its intended function can continue as God created it. This process replaces an organ that is unable to perform its function. With current medical advancements. The legal system is forced to balance the competing interests of donors both during life and after death. To achieve greater public benefits.

At the same time protecting individual rights. and the recipient hopes to be healed. This balance can only be achieved by maintaining the inviolability of the human body. and by criminalizing and prohibiting any form of infringement. in life or death, It is important to protect bodily integrity and bodily dignity after death.

The principle of physical dishonesty is a well-established concept among legal scholars. Because protecting the human body is in the public interest. This is clearly reflected in the Criminal Code, which provides the necessary physical protection from harm or injury. Although the right to physical integrity of organ transplant patients is diminished, But the clinical trials were clearly successful. This is what makes this practice a necessary treatment option for some patients. These patients replace their damaged organ with a functioning organ from another organ. We cannot fail to realize the importance of this medical advancement. And we cannot keep up with modern civilization. It uses modern medical practices to ensure people's health and wellbeing.

As such, organ transplants are an exception to the general prohibition on transactions involving the human body. However, medical advances do not violate the sanctity of the human body as long as the law supports this protection. The formula for medical progress is to preserve public health, which requires medical professionals to abide by the principles of physical malpractice. Therefore, the human body can only be changed for valid health reasons. Organ transplantation is one of the legal cases in which physical integrity can be compromised. Provided that strict rules must be followed. and these steps are in accordance with public order and legal requirements.

#### **Research Importance**

The increasing need to study organ transplantation from a legal perspective has arisen due to rapid medical advancements, positioning it as an effective treatment method in modern times.

#### **Research Problem**

What are the controls and regulations followed by criminal policy in the processes of human organ transfer and transplantation?

#### **Research Methodology**

The research adopts a comparative analytical approach by presenting the rulings of Islamic jurisprudence alongside Saudi and Egyptian systems regarding human organ transplantation and examining them.

#### **Research Structure**

- **Preliminary Chapter:** The nature of human organ transplantation and the legitimacy of its sale.
  - **Section One:** Concept of human organ transplantation.
  - **Section Two:** Legitimacy of selling and trading human organs.
- **Chapter One:** Donation of human organs.
  - **Section One:** Donation of human organs while alive.
  - **Section Two:** Donation of human organs after death.
- **Chapter Two:** Legal regulation for the protection of human organ transplantation.
  - **Section One:** Legal organization of human organ transplantation.
  - **Section Two:** Penal protection for the regulation of organ transplantation.

#### **Preliminary Chapter: The nature of human organ transplantation and the legitimacy of its sale**

The medical advancements in treating certain chronic diseases have resulted in a new phenomenon in practical life: human organ transplantation. This development raises numerous questions in various aspects and fields. Consequently, there is a need to clarify the meaning of human organ transplantation and to understand the concepts related to it and its emergence. Therefore, this chapter will be divided into two sections: the first will present the concept of human organ transplantation, while the second will address the legitimacy of selling and trading human organs.

#### **Section One: The Concept of Human Organ Transplantation**

The concept of human organ transplantation is relatively new, and different legal systems have varying interpretations regarding its meaning and the nature of the sale and trade of human organs. This will be clarified in the following subsections of this section.

#### **Subsection One: Definition of Human Organ Transplantation**

##### **First: Linguistic Definition of Human Organ Transplantation**

In language, "transplantation" refers to the profession of a farmer and the science of cultivating land. To "plant" means to nurture and grow something until it reaches its goal (Anis & Al-Sawalihi, 2011, p. 392). Human organs are the plural of "human organ," which is a part of the body, such as a hand, leg, or ear.

### **Second: Terminological Definition of Human Organ Transplantation**

The definitions of human organs and their transplantation vary across different fields. The Islamic Fiqh Academy defines a human organ as *"any part of a human being, including tissues, cells, blood, and similar elements, such as the cornea of the eye, whether it is connected to the body or separated from it (Islamic Fiqh Council, 1990, p. 220)."*

Several legislations have defined human organs as well. For instance, the Moroccan law regarding the donation of human organs and tissues defines in its second article that it is *"any part of a human being, whether it is replaceable or not, and human tissues, excluding those related to reproduction."* The Qatari law No. (15) concerning the organization and transplantation of human organs defines in its first article that human organs are *"a collection of interrelated tissues and cells taken from a living human body or from the body of a deceased person, which share in performing a vital function."*

The Saudi legislator defines human organs in Article One of the systems for organ donation as *"any part of the human body, whether from a living or deceased individual, or their tissues or any of their components."*

It is noteworthy that the Egyptian legislator did not provide a definition for a human organ in Law No. (5) of 2010 concerning the organization of human organ transplantation. Article One of the same law states that *"no organ transplantation procedures or parts thereof, or tissues shall be conducted by transferring any organ or part of an organ or tissue from the body of a living human or from the body of a deceased human for the purpose of transplanting it into another body, except in accordance with the provisions of this law and its executive regulations and implementing decisions."* The executive regulations of the law defined a human organ as including the liver, heart, kidneys, pancreas, and small intestines, while tissues are defined as skin, heart valves, blood vessels, bones, and any other organ or part thereof or tissue that can be transplanted in the future according to scientific advancements, after obtaining approval from the Supreme Committee for the transplantation of human organs.

From the aforementioned definitions, it is observed that they all converge in their essence, indicating that human organs are not limited to specific parts of the human body but encompass a general and comprehensive formulation of all components and parts of a human being.

Some legislations also address the definition of the process of transferring and transplanting human organs itself. For instance, the Qatari law No. (15) defines in its first article that it is *"the removal of an organ from a living person or a deceased body and its transplantation into another person."*

The Saudi legislator, in Article One of the systems for organ donation, defines it as *"a medical process in which a human organ—or a part of it—is removed from the donor's body and transplanted into the body of the recipient, using any approved medical means."*

Thus, it is a process with both negative and positive aspects. The negative aspect involves the loss of one organ from the first party, the donor—regardless of whether it is replaceable—while the positive aspect is represented by the recipient gaining a new organ.

### **Subsection Two: Legitimacy of Selling and Trading Human Organs**

The question arises regarding the legitimacy of a person selling their organs, considering their effective role in treatment on one hand, and their use as a means for financial gain on the other. To answer this, Islamic jurists and legal scholars have differing opinions on the permissibility of selling and trading human organs.

#### **First: The Position of Islamic Jurisprudence**

Islamic jurists are divided into two main groups regarding this matter: one group prohibits it, while the other permits it. The details are as follows (Tabatabai, 2014, pp. 372-375):

#### **1. Those in Favor of Prohibition**

Proponents of this view advocate for an absolute prohibition on the sale of human organs, arguing that it is invalid for human organs to be the subject of financial and commercial transactions for several reasons and evidences, as follows:

**a. Quranic Evidence**

The Almighty says in His Holy Book: “And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference” (Quran 17:70). The implication of this verse is that human beings possess a sacred dignity that God has bestowed upon them, which remains intact both in life and in death, encompassing all of their parts. Selling, owning, or considering a person as a commodity to be bought and sold contradicts this honor.

**b. Prophetic Hadith**

The Prophet Muhammad (peace be upon him) forbade selling what a person does not own, stating, “There is no sale except in what one possesses” (Hadith). The implication here is that the human body does not belong to the individual but is instead the property of Allah, and a person is merely a trustee of it. Therefore, one cannot engage in transactions that transfer ownership or submit it to barter; a person cannot relinquish their life or any part of their body in a manner that transfers ownership for compensation.

**c. Consensus**

There is a consensus among scholars prohibiting the sale of a free person, and if such a sale occurs, it is considered void. The explicit declaration of the invalidity of selling a free person leads to the conclusion that selling human organs is not permissible.

**d. Rational Considerations**

One condition for the validity of a sale is that the subject of the sale must be owned by the seller. A person does not own themselves or their organs; they belong to Allah, and ownership of oneself requires evidence that has not been established. A person is merely a guardian of their body and is commanded to preserve it. Furthermore, another condition for the validity of a sale is that the subject must be property. Human organs do not qualify as tradable property since they do not have value upon destruction like other forms of wealth. If they did, God would not have designated blood money for them in cases of loss after retribution, indicating that human organs are not recognized as valued property.

**2. Those in Favor of Permissibility**

Proponents of this view argue for the permissibility of selling human organs due to the necessity of saving the life of another person in need. They contend that in this era, there is tangible benefit from these organs, and it is possible to mitigate their associated risks and consequences. Moreover, the donor deserves compensation for the loss of an organ that cannot be replaced, and they base their argument on several considerations ([Tabatabai, 2014, pp. 377-382](#)):

**a. Analogy**

They draw a parallel to receiving compensation (blood money or compensation) for the loss of organs, arguing that blood money (diya) and compensation (arsh) serve as a price for the organ and a financial counterpart. Just as receiving blood money and compensation is permissible, so is receiving payment for the sale of organs. They also compare this to the general consensus that permits women to sell their breast milk and receive compensation for nursing, as it provides a benefit, and lawful benefits can be contracted.

**b. Rational Considerations**

The principle of permissibility is inherent in all things, and upon examining the texts, there is no specific prohibition against selling human organs. Thus, the default remains permissibility concerning the sale, and it is well-known that contracts can be made regarding benefits. The benefit from selling organs is realized when the buyer gains from their use, while the seller benefits financially, meeting a need.

The prevailing view among these opinions is that selling human organs should be prohibited, due to the strong arguments supporting this stance and the weaknesses in the counterarguments. Several factors highlight the preference for this viewpoint while undermining the opposing evidence.

Firstly, blood money and compensation are not prices or valuations for human organs; they are specific regulations applicable in cases of injury, which depend on various conditions and considerations. It is inappropriate to apply the same rules in cases of donation, which differ from acts of injury. Additionally, the analogy to permitting compensation for women's breast milk is not reliable, as there is controversy surrounding its permissibility, and matters with differing opinions cannot be subject to analogy.

Furthermore, the prohibition of selling oneself and the assertion that one does not own their life has a basis in Islamic law. It is not accurate to claim that the absence of a specific prohibition allows for such actions. For example, a person cannot kill themselves because their life is not owned by them but belongs to Allah. Finally, one of the conditions for permissible benefits is that they must be lawful; otherwise, they will not be recognized. The prohibition on selling a free person implies the illegality of gaining financial benefit from any part of their body, as the human body is not a commodity that can be priced or evaluated (Al-Qara, 2011, pp. 51-52).

### **Selling Human Organs in Legal Jurisprudence**

The Saudi system does not differ in its stance on the sale of human organs from the prevailing opinion in Islamic jurisprudence, which prohibits the sale and trade of human organs. Article 12, paragraph one, of the organ donation system states: "It is prohibited for the donor, their heirs, or their relatives to request any material or in-kind compensation in any form, or to receive compensation from the recipient or their relatives, or from health institutions or others, in return for the donor's agreement or the agreement of their heirs or relatives after their death to donate." Paragraph two of the same article further states: "It is prohibited for the recipient or their relatives, or others, to provide any material or in-kind compensation in any form to the donor or their heirs or relatives, in return for the donor's agreement or the agreement of their heirs or relatives after their death to donate."

The prohibition on giving or receiving payment for the sale of organs is very clear. The article explicitly mentions any material compensation in any form, which is a commendable approach as it encompasses all forms of compensation, whether it is a sale, gift, or otherwise. The prohibition also extends to receiving money from all parties involved, whether from the organ recipient, the organ donor, their heirs, or relatives, or even from the health institution that performed the transplantation. The intent behind this provision is irrelevant; any violation can occur, whether from the organ donor, recipient, or any of their relatives or heirs.

It is noteworthy that the system has expanded the scope of prohibition to include any material compensation resulting from intermediaries in the process of human organ transfer. This is mentioned in paragraph three of the previous article: "The prohibition stated in paragraphs one and two of this article applies to anyone who mediates in requesting or receiving or providing material or in-kind compensation." This prohibition is of great importance to prevent the trade of human organs, ensuring that the process of organ transplantation fulfills its humanitarian role effectively.

The Egyptian legislator has adopted a similar position, as outlined in Law No. 5 of 2010 concerning the organization of human organ transplantation, which stipulates the rules, conditions, and prohibitions related to organ transplantation or transferring any organ or part thereof, or tissue from one human body to another. This includes prohibiting the conduct of organ transplantation procedures or parts thereof, or tissues from a living human or deceased body for the purpose of transplantation into another person, except in accordance with the provisions of this law, its executive regulations, and its implementing decisions. Furthermore, any organ transfer must be necessitated by the need to preserve the recipient's life or to treat a serious illness, and it should be the only means to address this necessity without exposing the donor to serious danger to their life or health. Article 6 of the same law prohibits the dealing in any part of the human body or any of its tissues for sale or purchase, regardless of its nature. In all cases, the transplantation of an organ or any part thereof must not result in any material or in-kind benefit to the donor or any of their heirs from the recipient or their relatives as a result of the transfer or in connection with it. Additionally, the specialized physician is prohibited from initiating the transplantation process if they are aware of any violation of the provisions of the previous two paragraphs.

In conclusion, the Islamic legal debate surrounding the exploitation and sale of human organs leans heavily towards complete prohibition, a stance reflected in the laws of both the Saudi and Egyptian legislatures, which align with the opinion advocating against the sale of organs.

### **Section Two: Donation and Bequest of Human Organs**

Both donation and bequest are considered acts of generosity where the donor does not receive any compensation for what is given, and the recipient is not obligated to provide compensation (Souhaila, 2020, p. 16). Since the donation and bequest of human organs deviate from the previous forms of contractual exchanges, the question arises whether this difference confers a different legal status compared to selling, and what various issues might be raised by each of these actions.

#### **Subsection One: Donation of Human Organs While Alive**

Donating human organs has emerged as a contemporary issue that gives rise to numerous questions, differing in detail and rulings. This prompts significant inquiries in both Islamic jurisprudence and legal regulations, which we aim to address from both perspectives.

##### **First: Donation of Human Organs in Islamic Jurisprudence**

Islamic jurists agree on the prohibition of donating individual organs for which there is no substitute to perform their function, such as the heart, stomach, or liver in its entirety (Aqdim, 2014, pp. 117-118). This consensus arises from the understanding that the loss of such organs would lead to certain death. They also unanimously prohibit the donation of reproductive organs that carry genetic traits due to the greater evils that outweigh the benefits and the clear violation of the objective to preserve lineage. However, contemporary jurists have differing opinions regarding the donation of organs that are not vital or are regenerable, meaning those that do not affect human life directly. The discourse can be summarized as follows.

Contemporary scholars have debated the permissibility of a living person donating one of their organs, resulting in two main viewpoints:

#### **1. Those Against Donation**

Proponents of this view maintain that donating human organs is absolutely impermissible (Al-Qara, 2011, p. 18). They base their argument on several evidences and considerations, as upheld by scholars like Sheikh Muhammad Sha'rawi, Ahmed al-Khalili, Abdul Salam al-Sukari, al-Ghamari, al-Sanbali, and others (Al-Shanqeeti, 1994, p. 354). They support their position with several evidences, including:

##### **a. Quranic Evidence**

The Almighty says, "Spend in the cause of Allah and do not let your own hands throw you into destruction 'by withholding'. And do good, for Allah certainly loves the good-doers" (Quran 2:195). This implies that donating one's organ is a form of self-destruction for the sake of reviving another. Another verse states, "I will certainly mislead them and delude them with empty hopes. Also, I will order them and they will slit the ears of cattle<sup>1</sup> and alter Allah's creation." And whoever takes Satan as a guardian instead of Allah has certainly suffered a tremendous loss". (Quran 4:119), indicating that donating and transferring organs constitutes a prohibited alteration of Allah's creation. They also refer to the verse, "And do not kill yourselves" (Quran 4:29), which prohibits killing oneself and implies a prohibition on anything that may lead to death, as well as "Indeed, we have dignified the children of Adam" (Quran 17:70), indicating that the removal of human organs undermines human dignity, whether in life or death.

##### **b. Prophetic Tradition**

The Prophet Muhammad (peace be upon him) said, "O Allah, forgive his hands," which was said about Al-Tufail bin Amr when his fingers were cut off due to severe illness. He was seen in a dream with his hands cut off, and when asked about it, he replied that he was told, "We will not restore what you have corrupted," indicating he would be resurrected incomplete as a punishment. Additionally, the Prophet prohibited mutilation, saying, "Go forth in battle, but do not betray, do not act treacherously, and do not mutilate [the dead]." He also said, "Breaking the bone of the deceased is like breaking the bone of the living in sin," which signifies the prohibition of breaking or cutting any part of a living or deceased person without valid legal justification.

### c. Rational Considerations

They argue from reason that preventing harm is a primary objective of Islamic law, and organ donation poses harms that outweigh its benefits by incapacitating or disabling bodily functions, either partially or entirely. Furthermore, the validity of donation relies on the donor's ownership of the organ, which is not applicable, as individuals do not own themselves.

### d. Analogy

They cite that the Prophet commanded the safeguarding of people's rights; thus, if the sanctity of a person's wealth is strictly observed, it is even more crucial to preserve the sanctity of life by protecting these organs. They also draw parallels with the prohibition of excising a part of the body, comparing it to the prohibition of cutting off a limb, since both pertain to bodily integrity.

## 2. Those in Favor of Permissibility

This viewpoint asserts that a person is permitted to donate one of their organs for medical treatment (Al-Qara, 2011, p. 18). This perspective has been adopted by most contemporary scholars, including the Islamic Fiqh Academy, the Council of Senior Scholars in Saudi Arabia, and the Islamic Conference in Malaysia, among various fatwa institutions across different Islamic countries. Their arguments are based on several evidences:

### a. Quranic Evidence

The Almighty states, " But if someone is compelled by necessity—neither driven by desire nor exceeding immediate need—they will not be sinful. Surely Allah is All-Forgiving, Most Merciful" (Quran 2:173). Additionally, " But whoever is compelled by extreme hunger—not intending to sin—then surely Allah is All-Forgiving, Most Merciful" (Quran 5:3). These verses indicate that under circumstances of necessity, donating organs to those in need is considered an act of compulsion. Furthermore, " and whoever saves a life, it will be as if they saved all of humanity" (Quran 5:32) includes those who donate their organs to save another's life. The verse "Allah intends ease for you, not hardship" (Quran 2:185) also suggests that Allah wishes to ease the burden on His servants, which is fulfilled through organ donation, showcasing compassion and alleviating the suffering of the sick.

### b. Analogy

They draw parallels between the need for medical treatment through organ donation and the permissibility of wearing silk for someone with itching or treating oneself with gold, due to the necessity of these treatments. They argue that the need to transfer organs for the sake of preserving life is more important than the prohibition against cutting into a deceased body to retrieve a swallowed valuable item, emphasizing that preserving life takes precedence over safeguarding wealth (Al-Shanqeeti, 1994, pp. 374-375).

In conclusion, the prevailing view among scholars leans towards permitting the donation of human organs, due to the compelling need and justification for it, as indicated in the texts that consider it an exception to the prohibition as long as necessity prevails (Hashem, 2018). The prohibition against the individual who cut off his fingers serves as evidence of a lack of benefit from such an act, which necessitated a form of punishment.

Therefore, it is evident that the general tendency of Islamic jurisprudence supports the permissibility of human organ donation, maintaining a positive stance toward it. In the context of Islamic legal classification, organ donation is regarded as a gift contract, which is "ownership in life without compensation" (Al-Zoubi & Aziz, 2018, p. 159). The rules regarding retraction of such a gift differ among scholars: some prohibit it upon contract, while others allow it until the gift is received. Regardless of whether the obligation arises from the contract or receipt, organ donation has a distinctive, exclusive character. Thus, some scholars argue it should not be elevated beyond the status of a promise (Al-Qara, 2011, p. 29), which means the donor can retract their decision due to the unique nature of this act, resembling the situation of a will and the permissibility of retracting it (Al-Zoubi & Aziz, 2018, pp. 169-170). However, this right of retraction does not absolve the donor from compensating for expenses incurred due to the donation, such as hospital fees and medical costs. Nonetheless, if the organ has been transplanted and has settled in the recipient's body, the donor cannot retract the donation or request the return of the organ.

## Second: Donation of Human Organs in Legal Jurisprudence

The Saudi legislator aligns with the Islamic Sharia view that permits individuals to donate their organs, as this is the prevailing opinion supported by most contemporary scholars, academic institutions, and fatwa bodies. Article Two of the Organ Donation System states, "A person may donate or bequeath any of their human organs in accordance with the provisions of the system and in a manner that does not conflict with the provisions of Islamic Sharia, provided that this is done in writing and authenticated in the manner specified by the regulations." Although donation is a legal act and a contract that is formed as soon as its essential elements—consent, subject matter, and causal relationship—are present, the legislator has added a written form as a formal condition for the validity of the transaction. This written requirement appears to be established to ensure the integrity of the donation process, as organs are not movable and cannot be transferred without causing direct harm to the individual. Therefore, additional verification and caution are necessary to ensure that the donation achieves its intended purpose effectively ([Okaz Newspaper, 2021](#)).

Moreover, the Saudi legislator concurs with the Islamic jurisprudential stance that allows the donor to retract their donation at any time without restriction or condition. Article Four states, "The donor may retract their consent before the removal of the donated organ, and the donor who bequeaths before their death may also retract their bequest without any restriction or condition. This provision applies to anyone who has given their consent as per Article Three of the system." However, the right to retract is conditioned upon it being done prior to the removal of the organ.

Article Five of the Organ Donation System stipulates, "The donor must be clearly informed of all confirmed and potential consequences resulting from the organ removal procedure, and this must be under the supervision of the center." It is noted that the obligation to provide this information is limited to the donor by the licensed health facility performing the procedure. However, I believe the Saudi legislator has erred in this regard, as the organ removal process does not concern only the donor but also the recipient, who is the individual receiving the transplanted organ. This consideration has been acknowledged by the Egyptian legislator; Article Seven of the Egyptian law states, "The transplantation process shall not commence without fully informing both the donor and the recipient—if they are capable—through the tripartite committee stipulated in Article 13 of this law about the nature of the transplantation and its potential risks in the short or long term, and obtaining the consent of both the donor and the recipient."

Referring to the Egyptian law, Law No. 5 of 2010 regarding the organization of organ transplantation and sale outlines the mechanisms for organ donation. It specifies that no part of the human body may be donated if it poses a serious risk to the donor's health or life<sup>1</sup>. Additionally, Article Three prohibits donations from Egyptians to foreigners unless one is married to a foreigner for at least three years with a documented contract. Article Four explicitly states that no organ shall be transferred from one person to another except through the donation of a close relative, while for non-relatives, a special committee formed by the Minister of Health must approve the donation.

Article Five requires that, in all cases, the donation must be made with complete and documented free will, and it is prohibited for children to donate under any circumstances. Article Six prohibits the sale or purchase of any organ for any material compensation. The specialized physician is also barred from commencing any such actions without considering the provisions of this law. Additionally, according to this law, no transplantation can begin without prior notification to the donor regarding the potential dangers or adverse effects of the procedure on their health.

The executive regulations related to organ transplantation stipulate that there must be written consent from the donor, and the beneficiary must not be outside the family circle. Donations from

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1- Egyptian Law No. 5 of 2010 Regulating Human Organ Transplantation, Article 2, It is not permissible to transfer any organ or part of an organ or tissue from the body of a living human being for the purpose of transplanting it into the body of another human being except for a necessity necessitated by preserving the life of the recipient or treating him for a serious illness, and provided that the transfer is the only means of meeting this necessity and that the transfer does not expose the donor to a serious risk to his life or health. It is prohibited to transplant organs or parts thereof or tissues or reproductive cells in a way that leads to mixing lineages.



children are strictly forbidden, and specific hospitals with particular specifications and criteria have been designated for organ transplantation.

However, I take issue with both the Egyptian and Saudi systems for not requiring judicial oversight over the donor's consent. They only specify the conditions for valid consent without implementing any judicial review to ensure the validity of that consent, which is a significant concern. This inadequacy necessitates legislative amendments to address this gap, especially considering that the Egyptian legislator has permitted donations to non-relatives, which calls for stricter oversight over such operations.

### **Subsection Two: Bequest of Human Organs (Donation After Death)**

#### **First: Bequest and Donation of Human Organs in Islamic Jurisprudence**

Islamic scholars have differing opinions regarding the permissibility of donating human organs after death, commonly referred to as bequeathing organs (Al-Sahouri, 2013, pp. 23-25). Each opinion is supported by its respective arguments, as follows:

#### **1. Those Against Bequest**

Proponents of this view argue against the permissibility of bequeathing human organs (Lakhdar, 2019, p. 28), regardless of whether the deceased is completely dead or has experienced brain death (Barhama & Mohammed, 2020, pp. 1130-1132). This position is held by scholars such as Imam Sha'rawi, al-Ghamari, al-Sanbali, al-Saqaf, and Hasan al-Shadhili (Al-Shanqeeti, 1994, p. 354). The following points outline their reasoning:

**a. Violation of the Deceased's Dignity:** They argue that taking any action regarding the organs of the deceased constitutes a violation of their dignity, which must not be subjected to harm or mistreatment.

**b. Mutilation of the Deceased:** They believe that handling the organs of the deceased in this manner constitutes mutilation, which the Prophet Muhammad (peace be upon him) prohibited, saying, "Do not betray or mutilate." This inflicts harm and disrespects the dignity of the deceased.

**c. Divine Ownership of Organs:** The organs belong to Allah, not to humans, and therefore, it is impermissible to sell, give away, or bequeath them in a manner that could cause harm.

**d. Prohibition of Breaking Bones of the Deceased:** They cite the Prophet's statement, "Breaking the bone of the deceased is like breaking the bone of the living," as evidence of the sanctity of human beings, whether living or dead.

**e. Preservation of Five Essential Necessities:** They argue that Islam was revealed to protect five essential necessities and to shield them from harm. This includes prohibitions against killing oneself or cutting off any part of one's body, as well as prohibiting others from engaging in such acts, even with the person's consent.

**f. Prohibition of Treatment from Another's Body:** They assert that healing through the body of another person constitutes a change in God's creation, citing the Prophet's statement, "May Allah curse the one who connects hair and the one who seeks to have it connected."

This array of arguments reflects the strong opposition among certain scholars regarding the permissibility of bequeathing human organs after death, emphasizing the sanctity of the human body in both life and death.

#### **2. Those in Favor of Permissibility:**

Proponents of this view assert that bequeathing human organs is permissible (Barhama & Mohammed, 2020, pp. 1128-1130), a stance endorsed by the Council of Senior Scholars in Saudi Arabia (Islamic Fiqh Council, 1990, p. 136), the Islamic Fiqh Academy, the Egyptian Fatwa House, and the Fatwa Committee in the Hashemite Kingdom of Jordan. They support their position with the following arguments:

**a. Necessity of Consuming Human Flesh:** They reference the opinions of some scholars who permit the consumption of human flesh in cases of dire necessity.

**b. No Violation of Human Dignity:** They argue that utilizing a person's organs to treat another does not violate human dignity and does not constitute an infringement upon it.

**c. Analogy with Corneal Transplantation:** They compare the transplantation of a deceased person's cornea to the use of other organs, emphasizing the need to prevent harm.

**d. Principle of Choosing the Lesser of Two Harms:** They apply the principle of committing the lesser of two harms to achieve the greater benefit. The well-being of the living takes precedence over the dead's interests (Hashem, 2018), as the living may benefit from the treatment while the deceased does not lose anything.

From the above, it is evident that bequeathing human organs is permissible to benefit the living patient and to utilize the benefits of the organs, as Sharia emphasizes the necessity of preserving life. Moreover, handling the organs does not constitute mutilation of the deceased since it is done for the purpose of treatment and is carried out with care by qualified professionals. Organs should only be removed to the extent necessary, without causing harm or disrespect to the deceased.

Finally, the question remains whether a person can bequeath their organs and whether their heirs can donate their organs upon their death, even in the absence of a specific bequest. In truth, I have not found a definitive answer to this issue beyond scattered fatwas from some contemporary scholars, as no ruling has been issued by major juristic bodies or fatwa councils regarding this matter.

The summarized views in these scattered fatwas indicate that there is disagreement among contemporary scholars about the permissibility of heirs donating their deceased relative's organs. Ibn Baz ruled against this, stating, "The heirs do not inherit his body; they only inherit his wealth (Ibn Baz, n.d.)." Conversely, some contemporary scholars support the permissibility of such actions, justifying it based on the benefits involved. They argue that heirs have the right to seek retribution for their deceased relative and to accept blood money (diya) or reach a compromise, so it is reasonable for them to have the right to act regarding some parts of the deceased's body if it serves a beneficial purpose.

#### **Second: Bequest of Human Organs in Legal Jurisprudence**

The Saudi legislator has adopted the prevailing opinion allowing the bequest of human organs, mirroring Islamic jurisprudence. Article Two of the Organ Donation System states, "A person may donate or bequeath any of their human organs... provided that this is done in writing and authenticated in the manner specified by the regulations." This stipulation emphasizes the requirement for written documentation to formalize the bequest (Saudi Press Agency, 2024). Furthermore, the system allows the donor to retract their bequest at any time, as stated in Article Four: "The donor or the person bequeathing may retract their donation without any restriction or condition before their death." This clearly illustrates the Saudi approach aligns with the Islamic perspective on permitting the bequest of organs, while also encouraging the practice of organ donation.

However, the system adds a significant provision regarding the bequest not to donate. Article Eight, paragraph four, states: "It is prohibited to donate human organs in the following cases: ...4. If the person bequeathed not to donate any of their human organs after death." This is a commendable provision, as it safeguards an individual's will regarding the donation of their organs after death, preventing any unauthorized actions by their heirs.

The Saudi legislator also permits the deceased's heirs or closest relatives to donate the deceased's organs if they did not leave behind a bequest. Article Three of the system states, "Human organs may be transferred from a deceased person based on the approval of the closest heir. If it is impossible to identify the heirs, the approval of the closest relative shall be obtained. If there are multiple relatives of the same degree, the approval of the majority of them is required." This indicates that the Saudi legislator follows the viewpoint that allows heirs to donate their deceased relative's organs, requiring only the majority approval for the action to be valid.

An example of this is illustrated in a ruling by the criminal court in Mecca, where the plaintiff, the eldest brother among the heirs, requested to delay the burial of their deceased relative to obtain one of their organs for transplantation. The court noted that "the deceased's brothers informed the plaintiff of the issue that arose before burial and requested him not to proceed with the burial, as he wished to attend and benefit from his deceased brother's kidney due to the plaintiff's kidney

failure<sup>2</sup>." However, the other heirs refused this request, highlighting that the plaintiff did not obtain the necessary majority approval, despite being one of the heirs.

Thus, any donation by the heirs is contingent upon the absence of a bequest from the deceased against the donation of their organs, reflecting the principle that the explicit wishes of the deceased should be prioritized. Furthermore, heirs may retract their agreement to donate prior to the removal of the organ, as previously stated ([Okaz Newspaper, 2021](#)).

In comparison, the Egyptian legislator's position, as stated in Article 8 of Law No. 5 of 2010, allows for the transplantation of organs or parts of organs or tissues from a deceased person to a living person if necessary to preserve the life of a living person or to treat a serious illness, provided that the deceased has left a documented bequest to that effect. The law requires that such bequests be authenticated through official documentation or acknowledged according to the procedures established by the executive regulations of this law.

The executive regulations clarify that the bequest must be documented in writing and authenticated by the relevant authorities while the donor is alive, or included in any official document that confirms the donor's wishes, with approvals required from the Supreme Committee for Organ Transplantation ([Manshurat, 2010](#)).

To facilitate and simplify the procedures for organ transplantation, the Egyptian real estate registry and documentation authority has outlined steps for documenting bequests for organ donation. Their technical circular emphasizes that when documenting a bequest for an organ or tissue after death, the following conditions must be met ([Qasim, 2022](#)):

- Both the donor and the recipient must be Egyptian citizens.
- The bequest must clearly describe the organ or tissue being donated.
- The bequest must include the personal information and national ID number of the donor.
- The donation must be made without any material compensation or benefit for the donor or their heirs.

Regarding the retraction of donations, the notary public may not refuse to authenticate or certify the signatures of the parties involved in documents concerning the retraction of a previously agreed donation.

Furthermore, under no circumstances may the date of these documents be recorded, as stipulated in Article 8 of the law, which requires that the bequest be authenticated, as well as according to Article 5, which mandates that the donation declaration be validated at the real estate registry.

In summary, there is a noticeable variation between Islamic jurisprudence and legal perspectives regarding the donation and bequest of human organs. However, the general trend leans towards the permissibility of both donating and bequeathing human organs.

## **Chapter Two: Legal Framework for the Protection of Human Organ Transplantation**

Various legislations have shown considerable attention and care towards human organ transplantation, continuously striving to improve and facilitate its processes to reap the intended benefits while ensuring the proper functioning of the system through civil and criminal protections.

### **Section One: Legal Regulation of Human Organ Transplantation**

This section details the definitions, conditions, and regulations set forth in various systems to ensure that the process of organ transplantation and donation achieves its intended goals.

#### **Subsection One: Conditions for Donation and Bequest of Organs**

Articles Two, Five, and Eleven of the Saudi Organ Donation System specify the conditions for the validity of organ transplantation and transfer, stipulating that the donation must be:

- Made by a person with full legal capacity.
- Not cause harm to the donor.
- Documented in writing and authenticated.
- Performed by licensed institutions.

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2- Collection of Judicial Rulings for the year 1434 AH, Criminal Court of Makkah Al-Mukarramah, Ruling No. 34223913 for the year 1434, Court of Appeal of Makkah Al-Mukarramah, Decision No.: 34280456, Date: 1434/4/14 AH.



- Conducted only after comprehensive medical and psychological examinations of the donor.
- Accompanied by clear information regarding the outcomes of the donation process.
- Confirmed post-mortem according to the regulations determining death.
- In compliance with the provisions of the system and Islamic law.

It is noteworthy that the Saudi legislator emphasizes that the donor's decision must stem from complete will and full understanding of the details of the donation process, free from any defects of consent by a fully competent person. This approach is also reflected in various other legislations, such as Article 5(1) and Article 7 of the Egyptian law No. 5 of 2010 concerning the regulation of organ transplantation, which stipulates those donations must arise from free will without defects of consent and that donors must be informed of all potential risks. Similarly, Article Six of the Qatari law on organ transplantation requires that the competent authority ensures the donor's consent is free from defects ([Zaghloul, 2017, p. 115](#)).

Additionally, the system requires written documentation for the acceptance and validity of the donation, a requirement also adopted by several comparative legislations. Article Five of the previously mentioned Egyptian law mandates that donations be documented in writing. The executive regulations of this law (Article 5/1) specify that the written declaration must be accompanied by the signatures of two first-degree relatives of the donor. Likewise, Article Two of the Kuwaiti Decree Law No. 55 of 1987 mandates that donations be documented in writing with the signatures of two fully competent witnesses.

#### **Eligibility of the Donor and the Bequeather:**

The third paragraph of Article Eight of the Saudi Organ Donation System mandates that the individual wishing to donate must have full legal capacity. Therefore, any actions taken by a person lacking full capacity or having diminished capacity are not recognized, which means that donations from minors are not accepted. The system prohibits donations if the living donor is incapable or lacks capacity, stating that "if the living person lacks full legal capacity, the consent of their guardian or custodian is not recognized." Consequently, the individual performing the act must be an adult, of sound mind, and not under guardianship to be considered fully competent ([Bou Karzaza, 2014, p. 23](#)). This requirement is echoed in various comparative legislations, including the Egyptian, Qatari, and Kuwaiti laws, with Article 5(2) of the Egyptian law explicitly stating that donations from minors or those lacking legal capacity are not accepted.

Regarding bequests, Article Eight of the Egyptian law No. 5 of 2010 states that it is permissible to transfer a human organ from a deceased body if the deceased has bequeathed their organs before death. Similarly, Article Two of the Kuwaiti Decree Law No. 55 of 1987 allows a person of full legal capacity to bequeath any of their organs ([Zaghloul, 2017, p. 113](#)).

Concerning the ability of heirs to donate the organs of their deceased relative, many laws have addressed this issue. Article Five of the Kuwaiti Decree Law No. 55 of 1987 permits donations by the relatives of the deceased who did not express their wish to donate. It specifies that the approval of the second-degree relatives of the deceased, who are fully competent, is required, and if there are multiple relatives, the majority must consent. In contrast, Article Seven of the Qatari law No. 21 of 1997 regarding organ transplantation requires that if there are multiple relatives of the same degree, all must provide their consent. Conversely, the Egyptian law No. 5 of 2010 restricts the donation of a deceased's organs in Article Eight, stating that such donations are contingent upon the deceased having explicitly bequeathed their organs before death.

#### **Subsection Two: Cases Where Donation and Bequest Are Prohibited**

Article Eight of the Saudi Organ Donation System outlines the cases in which the process of organ transplantation is prohibited, which include:

- **Lack of Legal Capacity:** The donation must not be made by a person who lacks legal capacity.
- **Essential Organs for the Donor's Life:** If the organ is essential for the donor's survival.
- **High Risk of Failure:** If the medical team has strong reason to believe that the organ transfer will fail.



- **Incompetent Donors:** If the donor lacks or has diminished legal capacity, their guardian or custodian’s consent is not recognized.
- **Expressed Wishes Against Donation:** If the donor has explicitly bequeathed not to donate their organs.
- **Genetic Material:** If the organ to be transplanted carries genetic traits or is part of them. Particular attention should be given to the last point, which prohibits the transfer of organs carrying genetic traits. This prohibition is echoed in several comparative laws, including Article 2(2) of the Egyptian law No. 5 of 2010 and Article Three of the Qatari law No. 21 of 1997 regarding the organization and transfer of human organs.

#### **Considerations for Organ Transplantation:**

Articles Ten, Twelve, and Thirteen of the Saudi system impose several conditions that must be adhered to during the organ transplantation process, including:

- **Preservation of Dignity:** Ensuring the dignity of the donor is upheld, protecting them from humiliation or mutilation and keeping their information confidential.
- **Prohibition on Compensation:** Donors, their heirs, relatives, or the institutions performing the transplant, as well as intermediaries, are prohibited from receiving or offering any form of material or in-kind compensation, except for the costs and services provided by the institution during the transplantation process.
- **Proper Use of the Organ:** The institution must not use the human organ for purposes other than those for which it was removed.
- **Reporting Deaths:** Delays or failures to report deaths occurring within health facilities are prohibited.
- **Legal Restrictions:** Transplanting organs that were removed as part of judicial penalties or retribution is forbidden.

Among these stipulations, the most significant is the requirement for the donation to be free of charge. This principle is crucial, as it mandates that no material compensation be exchanged under any circumstances, whether involving the parties to the donation, their relatives, or the institution involved. Many laws share this principle, such as Article Four of the Egyptian law No. 5 of 2010, which requires that donations be made freely without any material compensation. This is similarly addressed in Article Ten of the Qatari law on the organization and transplantation of human organs, which prohibits the sale or purchase of human organs and any advertising or promotion related to this (Zaghloul, 2017, p. 155).

Additionally, the Saudi system guarantees the preservation of the donor’s dignity and protection from humiliation. This requirement is reflected in the proposed Egyptian law regarding organ transplantation in Article Ten. However, the Egyptian law No. 5 of 2010, upon its issuance, did not include this provision, despite its necessity. There is no clear reason for this omission, as respecting human dignity and protecting individuals from humiliation are paramount and non-negotiable, especially given that donors deserve appreciation for their altruistic acts, which may involve personal loss to preserve and protect another’s life.

Furthermore, the Egyptian legislator has prohibited, as stated in Article Five of law No. 5 of 2010, the donation of organs from children, stating that parental consent or consent from a guardian is not recognized. However, there is an exception for the transplantation of stem cells from the child to their parents or among siblings, provided there is no other donor (Ahmed, 2019, p. 137). This requires written consent from both parents if they are alive, or from one parent if the other is deceased, or from the legal guardian. Additionally, the law allows the donor to retract their consent prior to the start of the transplantation process.

#### **Section Two: Legal Protection for Organ Transplantation Regulation**

The enactment of laws and regulations does not ensure compliance unless there are penalties for violations to guarantee their proper implementation and adherence (Al-Rafai, 2008, pp. 28-29). Most legislations impose penalties for violating the regulations governing organ donation and provide both civil and criminal protection.

### Subsection One: Civil Protection for Organ Transplantation Regulation

Donation is a legal act and a contract that is established once its essential elements—consent, subject matter, and causal relationship—are present. Therefore, there is no specific form required for its validity. However, the legislator has introduced a written form as a formal condition for the validity of the transaction. This requirement for written documentation is implemented to safeguard the donation process, as organs are not movable and cannot be transferred without causing direct harm to the individual.

Article 25 of the Saudi Organ Donation System provides civil protection for individuals harmed by violations of the organ donation regulations. It states: "Without prejudice to the penalties stipulated in the system, anyone who suffers harm as a result of committing any of the actions prohibited by the system or regulations has the right to claim compensation for the harm before the competent court." This provision allows the harmed party to seek restitution for damages upon proving the elements of tort liability, which include:

- **Fault:** The harmful act that breaches a legal obligation.
- **Damage:** The harm resulting from the fault, which can be either material or moral.
- **Causal Relationship:** A direct link between the fault and the damage.

By ensuring these elements, the legal framework allows individuals who have been harmed due to violations of the organ donation regulations to seek appropriate compensation ([Al-Sanhouri, 1964, pp. 854-872](#)).

### Subsection Two: Criminal Protection for Organ Transplantation Regulation

The Saudi legislator has established criminal protections by imposing penalties for violating the regulations concerning organ donation, as outlined in Articles 21 and 23 of the system, which include the following:

#### Primary Penalties:

##### First: Fines up to 500,000 Riyals

Individuals who violate the provisions of Article Eight, which addresses the prohibitions on organ donation, as well as Article Ten, which requires maintaining the dignity of the donor and protecting their information, will face fines not exceeding this amount.

##### Second: Fines up to 1,000,000 Riyals

Health facilities that violate Article Thirteen of the Organ Donation System by improperly handling human organs (e.g., using the organ for purposes other than those for which it was removed), failing to report deaths occurring within the facility, transplanting organs removed under judicial sentences, or receiving any material or in-kind compensation for the transfer and transplantation of organs will incur this penalty, with confiscation of proceeds upon conviction.

Additionally, it is worth noting Article Two of the Anti-Human Trafficking Law, which considers receiving compensation for human organs as a form of trafficking. The article states: "It is prohibited to traffic any person in any form, including coercion, threats, deception, abduction, exploitation of authority, or weakness, or offering or receiving financial benefits or advantages to obtain consent from someone in control of another person for... or for the removal of organs."

Those who commit this crime, attempt it, or participate in it will face penalties equivalent to those for the completed crime, which may include imprisonment for up to fifteen years or fines not exceeding 1,000,000 Riyals, as per Articles Three, Eight, and Ten. This reflects the serious nature of human trafficking, recognized as the third-largest illegal trade in the world after arms trafficking and drug trafficking in terms of financial returns.

Furthermore, the system includes disciplinary penalties as stated in Article 22 of the Organ Donation System for violating any provision of the system or its regulations, imposing fines not exceeding 300,000 Riyals, along with the possibility of imposing any of the previously mentioned secondary penalties. These penalties will be issued by an administrative body consisting of at least three members, including a legal or sharia advisor and a specialist in human organ transplantation. Decisions will be made by a majority vote, and the administrative court will handle appeals against these decisions, all aimed at preserving the sanctity of the human body and protecting human dignity without legal or regulatory justification ([Al-Sagheer, 2015, p. 08](#)).

### Third: The Saudi Legislator's Approach to Criminal Penalties

The Saudi legislator imposes a penalty of imprisonment for up to two years and a fine not exceeding one million Riyals, or either of these penalties, for violations of the provisions outlined in Article Twelve. This includes offering or receiving material or in-kind compensation by the donor, their heirs, relatives, or intermediaries in any form. Additionally, upon conviction, the financial proceeds may be confiscated (Al-Baqli, 2010, p. 10).

Moreover, individuals attempting to commit the aforementioned violations are subject to half of the maximum penalty, and if they are repeat offenders, the penalties are doubled. The Public Prosecution is responsible for investigating and prosecuting these cases, while criminal courts handle the trials for these cases.

#### Egyptian Legal Framework

According to Article 17 of the Egyptian law No. 5 of 2010, anyone who transfers a human organ or a part of it for transplantation, in violation of any provisions of Articles 2, 3, 4, 5, or 7 of this law, is punishable by imprisonment and a fine not less than 20,000 Egyptian pounds and not exceeding 100,000 Egyptian pounds. If this act involves living human tissue, the penalty is imprisonment for up to seven years. If the act results in the death of the donor, the penalty is stricter imprisonment along with a fine not less than 100,000 Egyptian pounds and not exceeding 200,000 Egyptian pounds.

Furthermore, Article 18 states that, without prejudice to the penalties prescribed in Articles 17 and 19 of this law, anyone who performs transplantation or surgery outside licensed medical facilities, with knowledge of this fact, will face imprisonment and a fine not less than 200,000 Egyptian pounds and not exceeding 300,000 Egyptian pounds. If this act results in the death of the donor or recipient, the penalty is life imprisonment. The same penalty applies to the person in charge of the management of the unlicensed medical facility conducting any organ transplantation or tissue transfer, with their knowledge.

Article 20 emphasizes that anyone who violates any of the provisions of Article 6 of this law is punishable by imprisonment and a fine not less than 50,000 Egyptian pounds and not exceeding 200,000 Egyptian pounds. Additionally, any monetary or material benefits obtained from the crime will be confiscated or, if not recovered, a judgment will be issued for its value. The penalty for transferring or transplanting tissue in violation of Article 6 may not exceed seven years. The crimes specified in this article are considered predicate offenses punishable under the Anti-Money Laundering Law No. 80 of 2002.

#### Homicide Charges

Article 21 clarifies that anyone who transfers any organ, part of an organ, or tissue from a human body without definitive proof of death, as specified in Article 14 of this law, resulting in the individual's death, will be charged with intentional murder with premeditation under Article 230 of the Penal Code. Those who participate in issuing a declaration of death without conducting the required tests as outlined in Article 14 will face severe penalties, including life imprisonment.

#### Secondary Penalties:

The judge may include any of the following secondary penalties in their ruling, as they see fit:

- **Professional Disqualification:** The prohibition of any member of the medical team involved in the organ transplantation from practicing their profession, either permanently or temporarily.
- **License Suspension:** The suspension of the license of the violating medical facility for a period not exceeding one year.
- **Closure of the Facility:** The closure of the violating facility for a period of not less than two months and not exceeding one year, with consideration for permanent closure in case of repeat offenses.
- **Publication of Judgment Summary:** The publication of a summary of the judgment at the expense of the individual who committed the violation.

In contrast, the Egyptian legislator addressed this issue in Article 22, which states that intermediaries in the crimes stipulated in this law are subject to the same penalties prescribed for

the crime. However, the intermediary is exempt from punishment if they inform the authorities about the crime before its completion and assist in apprehending the perpetrators.

Article 23 stipulates that anyone who violates any other provision of this law or its executive regulations will be punished with imprisonment and a fine not less than 3,000 Egyptian pounds and not exceeding 10,000 Egyptian pounds, or with one of these penalties alone.

Furthermore, Article 24 emphasizes that, in addition to the penalties prescribed for the crimes specified in this law, the court may impose one or more of the following measures depending on the circumstances:

- **Professional Disqualification:** Prohibition from practicing the profession for a period of not less than one year and not exceeding five years.
- **Closure of the Facility:** Closure of the unlicensed medical facility where the crime occurred for a period of not less than two months and not exceeding one year, with a final closure ruling if it is not a licensed medical facility.
- **Suspension of License:** Suspension of the organ transplantation or tissue transplant activities in the licensed medical facility for a period of not less than three years and not exceeding five years.
- **Publication of the Judgment:** Publication of the judgment in two widely circulated daily newspapers at the expense of the convicted party.

In the case of repeat offenses, the court shall impose one or more of the measures specified in this executive regulation of the law.

#### **Conclusion**

##### **First: Research Findings:**

- The principle of the inviolability of the human body is a well-established concept among legal scholars, as protecting the human body is essential for public interest. This is evident in the framework of criminal legislation, which has focused on ensuring necessary criminal protection to uphold the sanctity of the body from interference that compromises its integrity.
- Both the Saudi and Egyptian legislations regulate the provisions of organ donation and bequest, criminalizing the sale of organs.
- The Saudi and Egyptian legislations prohibit receiving any material or in-kind compensation for intermediaries involved in the organ donation process.
- The process of human organ transplantation has constitutional support, as the Egyptian Constitution of 2014 explicitly states a person's right to donate their organs during their lifetime or after death, and mandates the state to establish a mechanism to regulate the rules for organ donation and transplantation.

##### **Recommendations:**

- The researcher recommends that the Saudi legislator amend Article (5/4) by adding the term "recipient" (the donee), so that the phrasing of paragraph (4) reads: "4- The donor and the recipient (donee) must be clearly informed of all confirmed and potential outcomes in the short and long term regarding the removal of the human organ, and this must be under the supervision of the center."
- A regulatory amendment to the Saudi Organ Donation System is necessary to consider prioritization rules. This should include referencing the content of the five paragraphs of Article (10) of the Egyptian law, which enshrines concepts of impartiality, integrity, transparency, and the commitment to avoiding conflicts of interest, along with humanitarian considerations taking precedence over material aspects.
- It is essential to establish a unified and modern Arab guiding law, replacing the guiding law set by Arab health ministers during the period from December 16 to 18, 1996, and to activate Arab cooperation in combating human organ trafficking.

##### **Bibliography**

1. Ahmed, M. S. (2019). *Criminal Protection of the Human Body in Light of Modern Medical Trends*. Algeria: University of Tiaret.





2. Al-Baqli, H. A. (2010). *Criminal Protection for Human Organ Transplantation between Sharia and Comparative Law*. Cairo, Egypt: Dar Al-Ulum.
3. Al-Qara, A. A. (2011). *Jurisprudential Issues in the Transplantation of Human Organs* (1st ed.). Kuala Lumpur, Malaysia: Dar Al-Kutub Al-Ilmiyyah.
4. Al-Rafai, A. M. (2008). *Introduction to Legal Sciences*. Egypt: Benha University.
5. Al-Sagheer, A. A. (2015). *Human Organ Transplantation in Light of Islamic Sharia and Positive Law*. Cairo, Egypt: National Center.
6. Al-Sahouri, R. A. (2013). *The Will of Human Organs between Islamic Law and Positive Laws. Master's Thesis*. Jordan: Al al-Bayt University.
7. Al-Sanhouri, A. R. (1964). *Al-Wasit in Explaining Civil Law*. Beirut, Lebanon, : Dar Ihya' Al-Turath Al-Arab.
8. Al-Shanqeeti, M. M.-M. (1994). *Rulings on Medical Surgery and the Consequences Thereof*. Kingdom of Saudi Arabia: Al-Sahaba Library.
9. Al-Zoubi, A. M., & Aziz, F. A. (2018). *Recovering Organs after Donation*. *Journal of Legal and Political Sciences*.
10. Anis, I., & Al-Sawalihi, A. (2011). *Al-Mu'jam Al-Wasit* (5th ed.). Cairo, Egypt: Dar Al-Da'wa.
11. Aqdim, J. (2014). *The Issue of Organ Transplantation in the Balance of Islamic Law*. *Heritage Studies Journal*.
12. Barhama, A., & Mohammed, A. (2020). *Donating Human Organs from a Jurisprudential Perspective and the Extent of Saudi Society's Awareness of Organ Donation and the Efforts of the King Salman Center for Organ Donation*. *Journal of the Faculty of Dar Al-Ulum*.
13. Bou Karzaza, A. (2014). *Civil Liability of Minors*. *PhD Thesis*. University of Constantine.
14. Hashem, A. H. (2018). *Organ Transplantation*. Retrieved from Record: <http://Record/com.mandumah.sea>.
15. Ibn Baz, A. A. (n.d.). *The ruling on organ transplantation after the death of a brain-dead person*. Retrieved from <https://cutt.us/upCJ2>
16. Islamic Fiqh Council. (1990). *Resolution of the Islamic Fiqh Council. Benefiting from the Body of Another Human Being, Living or Dead*. Jeddah, Kingdom of Saudi Arabia: Contemporary Jurisprudential Research Journal.
17. Lakhdar, J. (2019). *Donation of Human Organs*. *Al-Nadwa Journal of Legal Studies*.
18. Manshurat. (2010). *The executive regulations of the Human Organ Transplantation Regulation Law No. 5*. Retrieved from manshurat: <https://manshurat.org/node/762>
19. Okaz Newspaper. (2021, 04 02). *28 articles specifying the conditions for transplantation and donation of human organs*. Retrieved from okaz: <https://www.okaz.com.sa/news/na/2063702>
20. Qasim, I. (2022, 09 30). *The Real Estate Registry sets the conditions for documenting the will to donate organs after death and withdrawing it*. Retrieved from youm7: <https://www.youm7.com/story/2022/9/30>
21. Saudi Press Agency. (2024, 02 12). *in response to the initiative of the Custodian of the Two Holy Mosques and His Royal Highness the Crown Prince "Tawakkalna", launches the organ donation registration service through its website*. Retrieved from Saudi Press Agency: <https://www.spa.gov.sa/2227678>.
22. Souhaila, H. M. (2020). *Charitable Acts in Algerian Legislation*. *PhD Thesis*. Algeria: Mouloud Mammeri University.
23. Tabatabai, S. F. (2014). *Selling Human Organs for Transplantation to Those in Need from the Perspective of Islamic Scholars*. *Journal of Sharia Research and Studies*.
24. Zaghoul, B. S. (2017). *Criminal Protection in the Field of Human Organ Transplantation: A Critical Analytical Study in Light of the Legislations of Egypt, Kuwait and Qatar*. *Journal of Law*.