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### Prisoners Sentenced to Death for Organ Donation from the Perspective of Jurisprudence and Islamic Law

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#### ABSTRACT

Development of science and technology advancement of medical knowledge and science, organ transplants brought new problems and issues, it can be noted that the ability or lack of ability to offer prisoners sentenced to death in organ donation. According to the dynamism of Islam (Shia) Islamic law and jurisprudence, and therefore can respond to various issues and aspects is related, however, with the creation of the subject matters of this kind of project requires placards, legal resources and legal literature, there is no discussion on this adequate independent, so exploring the regulatory and legal reasoning and legal interpretations (the assumed) and legal (type properly subject to space) seeks takers answer. Principles and rules, including neglect of effective decision making, awareness and seeks its range in the legal system in general, and especially in the realm of retribution and punishment and comparative effect of this is that it represents a legal mechanism: Execution by noting the possibility of organ donation, intellectual, scientific and logical, but in practice it can be considered to be a national and international environment.

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#### INTRODUCTION

A: Life is a human right. For the realization of rights (evidence and proof) that we are forced to adhere to the Dos and Don'ts. What must be done to make this a better and more beautiful right now and what must not be done to impair the right to be painful. Retaliation is a must and should also be comprehensive and obstacle. Retaliation is a resuscitative process. Respect for others to grimace of life and punish those violating it to prevent future happiness, etc. are read all retribution.

B: The new science of organ transplantation in recent years with the development of modern science and technology with the eyes facing up so that the progress and development in the field of science brought new problems and issues among which the ability or lack of ability to perform the execution can proceed through organ donation noted. According to the magnitude and importance of such issues in periods where there is no pre-existing legal resources, legal and there is no debate on the independent, therefore forced to rely on legal arguments and legal interpretations are looking for answers to these questions:

Is there the possibility of death by organ donation?

Retribution of lexical and terminological

The source code is the weight of a single triad's death has been the subject Solathi Mazid.

(Retaliation to something, which means it's going to eventually seek work).

(Retribution: pay the salaries of the injury and gradually ... he will pay his words were taken out).

Criminal punishment is against the law and by the victim's parents or legal guardian and must be used against the perpetrator of the crime is such that the law recognizes and that the offender has been done, then it should be the same punishment (Jafari Langroudi, 1388: 545).

Note that there are two points in the term retaliation is necessary:

First, that retribution must be logged into the same crime against the victim, rather than on the criminal. Therefore, if the people of a society or a felony assaults, to carry out mass killings and human blood or tribal retribution he will not take revenge. Second, the restoration of crimes or assaults that can lead to money or

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pardoned or indeed in a community or school is permitted to track the crime to obtain insurance or pardon; it called for the punishment of crime not say, though it may be literally called Retribution (Khosroshahi, 1387: 3).

*A study of Foundations and Mining Death (Death by Organ Donation), the Legal System and Islamic Law: Introduction:*

The question of whether or not the implementation of the death through organ donation debate is emerging that using this method rather than the traditional alternative and require the execution of a serious exploration of the principles and opinions of jurists and lawyers. Where it acts as a form of temporal phenomena cannot be clearly implicate the Quran and traditions of the license or permit to be required adopted in this way that a closer look at the basics and fundamentals of legal and normative influence on the extraction and thrown through a better understanding and an open verdict reading proportional to the time principles of the sentence than preparation for or the or accessories approach. The survey comes to the conclusion that the great debates and accessories to the license or permit, directly or indirectly are related to the three issues below:

- A- Topic of equality in punishment (What is meant by equality? And the range and scope of what is considered to be equal.)
- B- The execution threads relaxation (How much is relaxation rate? And other questions in this regard).
- C- Topics consciousness during execution. (Is the level of consciousness necessary during the execution? If you need to be alert to what extent is this? ...)

*1 - Equality topic:*

The principle of equality is important that a significant portion of the legal system and the roots are the foundation of our rights. In many verses and traditions, and in some cases clearly indicate that many scholars have concluded Legal Decisions their attention to it. Due to the application of equality and justice in the death of Johnny demands that what is meant by equality? And the circle of inclusion and equality, in other words, the scope of the term as a range Verses and what is included? Or in other words, the purpose of the requirement of equality in punishment of crime, simply follow (leave the breath of life) or equal in type, quality and character of the crime is? Or is it simply spend the equity in retaliation of murder is life or death and the manner of enforcement of equality in the condition of suffering and damage? The review material (as) in the dictionary, we extract a few more:

- A. Like material (Beljomlleh) when the two sides are used.
- B. One on either side of the reference and the principle of analogy and is located on the other side, attention, and reference is expected.
- C. The type of interest and the second refers to the principle of equality and diversity is amplified by the first cause.

According to the verses and hadiths that they will in the future, it should be the punishment of the crime against the victim into the criminal rather than imported. The territory equal retribution must be clearly defined because of the general acceptance of the idea of equality in punishment is death penalty and of course any idea the way of its own will be the execution. What caused the jurists and lawyers tend to choose the amount equal to the execution, Check that the lexical meaning of the word punishment and the perception and mindset of the Hadiths and verses that the result is a total equity and quality in the work of equality bodies know. And the other groups show different stances and lexically verses and narrations word means death, of equality in the range of harassment Ghesas know conditionalizes and punishment. The following is a review of both jurists and lawyers will comment separately:

*Advocates full equality in view of the death penalty:*

Glimpse of what evidence comes from retaliation legislation is undoubtedly a right to retaliate against the victim that is placed on safety. Also the place is not perfect in execution, the diversity and equality (Equality) is the quantity and quality of the crime and its punishment. (Hashemi Shahroudi, 1378: 347).

*Adherence to the literal meaning of death:*

Adherents of this view to carrying forward his views have primarily examined the lexical word retaliation, the group using the word literally means retribution in favor of full equality of the punishment have been retaliation. And believe that the punishment should be equal to the quantity and quality of the breath of life in his act.

*Adherence to the Quran:*

- 1- Sura Baqara verse 194 - The compound (look like) refers to the perception and judgment are completely equal.
- 2- Sura Nahl, verse 126
- 3- Sura Asraa, Verse 33

The mastery of verse bound constraint would not waste that proponents claim absolutely no consistency. Advocates for solving this problem with the interpretation of the waste, other than equality and punish the killer or killers together (for example, killing the family or clan members) are still in favor of total equality.

#### 4- Surah Shura, Verse 40

The second chapter explains the emphasis is the same as the total extract. The context of this verse the word appearing in the following, refers to the individual's death. The whole debates over this issue, which can be obtained on retaliation, equal to the amount of pain and discomfort normally include crimes that are against the rights of the victim or guardian. So he has the right to demand the punishment of a painful and life could not refuse it. (Hashemi Shahroudi, 1378: 351).

#### *Adherence to traditions:*

To prove their point, the group also has a number of traditions that are discussed below:

- 1- Hadith of Imam Hasan Askari (as) quotes Imam Sajjad (AS) in the following verse 178 of Surah Baqara, which is interpreted as equality, revenge and the killer, is killed in the same manner that he killed the victim.
- 2- Hadith from Imam Jafar Sadiq (as) quotes the following verse 33 of Sura Israa Ishaq bin Ammar that this verse forbids extravagance of killing or mutilating someone other than the killer, the killer is identified.
- 3- (A static version of Imam Jafar Sadiq (AS) says: Imam Sadiq (AS) said to Imam Ali (AS) said that a man came up to her belly rubbed his clothes Raalvdh man said. Imam (AS) ruled that the man's belly rubbed his clothes, beat him up as the man was infected, the infection or the extent of his clothes to pay third of the blood money) (Horr Ameli, 1,414th AH: 138).
- 4- A Jewish man, woman and noticed that the jewelry along. He was killed with stones. Woman before the Prophet did and still lives in his body. Several people mentioned whether would they killed you? He pointed out said: no.

Name three people who came, he said; pointing out that yes, he is a murderer.

Prophet Mohammad (SA) asked him and killed him with two stone. (Bukhari, 1401 AH, vol 4: Chapter 963).

A study of regardless of the views of advocates of destroying confidence in the qisas punishment Imami jurists known as the view that it will comply with:

- A- On the death penalty, only to destroy life it is enough. Retribution should be carried out in such a way that the least amount of human suffering and harassment when the death penalty is tolerable.
- B- Retribution should be carried out in such a way that the least amount of human suffering and harassment when the death penalty is tolerable.

Exemplary punishment of the crime and punishment and the full diversity

Believers of the following reasons:

Believers in the following two ways of proving our point of view have argued:

- A- Sometimes the reasons for the denial of full equality of believers.
- B- Presenting some verses and narrations of lexical and making positive logic.

#### *Reasons for denial of full equality of believers:*

- 1- In the verses cited do not believe in equality be understood as the word means.
- 2- Most of these verses are referring to the legitimacy and quality of such retribution is taken not to fold.
- 3- In case narratives refer to the full equality of believers' agreement and license agreement can be seen as a promise to not like some of the narrative and the promise of equality of retaliation in the traditions of the other.
- 4- Most of these are narratives, or malaise document or that document the health implications of clarity not good (perfect equality).
- 5- The word implies, but does not have full equality implies equality in the work.

#### *Provide positive evidence:*

- 1- Accounts of exemplary punishment are prohibited, even if such an act is guilty of murder.
- 2- All the narrations that are used in discussing relaxation in retaliation for expressing their traditions even though the killer should be punished by the sword of his do have to be causing the death of the murder victim had painful.
- 3- lexical analysis and views on the epistemological and material equality as implying similarity between the two, but to understand the cause of equality and equity in the minds, this understanding cannot be achieved without the full similarity (with the attitude that full equality is not possible).

#### *Relaxation threads:*

If pain or no pain in life away from the criminal

The execution must undergo extreme physical pain or suffering that no mere breath is enough to destroy as an essential element of suffering or death, but is the condition in detail?

*Forbidding the killing of waste:*

In verse 33 of Surah Israa verse to the beginning of the criminal punishment for his kin has been fixed. But he does not exceed his or her right to claim the rest of the verse. Thus the interpretations come about this episode is that it represents cannot be like the killer he has to do so. Plenipotentiary to the victim or the killer or the victim's family completely lost, because that may result in prejudice and anger and revenge, torture and criminal in their play and the imam of the killer with a cane kill (it was mentioned in the story) are not permitted to do so. Arguments which can be achieved by the principle of retribution (painful or not) is a condition of similarity of features that place them in retaliation. So in regard to the punishment of death for the crime of pain is usually normal and customary nature, the original crime, it is diverse. This diversity should be punished as well as the relationship of law and order rational and this is achieved through and has some evidence of the death sentence (Hashemi Shahroudi 1378: 349). In general it can be concluded that the similarity in principle to some painful and the pain that is normally inherent in the crime, or the rights of the victim will against her. So he has the right to be called painful punishment and the criminal cannot refuse it.

*3 - Issue alert:*

The use of an anesthetic before his execution

Among the issues emerging in connection with the development of a life away from crime among jurists and lawyers has been raised about the use of anesthesia prior to execution. Perhaps the leading reason for attending this medical advance not only in philosophy, perhaps we run around, and death have been distorted and do not know what is the purpose of this sentence? And is punishment of the guilty merely to suffer? Or can possible destroy any criminal? Can a person be sentenced to death make himself unconscious or someone make him unconscious before the execution? Can we use the method that gives less pain inflicted on criminals?

This is a question that advances in medical science today, in light of new surgical techniques and to show off. Advancement of medical knowledge and new surgical techniques has made it possible to numb the body or part of it, feeling the pain of the wound multiplying not to happen. Among contemporary scholars Grand Ayatollahs two theories are evident. I believe that under the anesthesia and numbness okay. In this category, Ayatollah Makarem (Jalali et al, 1390:19), and Ayatollah Mohammad Taghi Bahjat is appreciable, the question is put to them: According to several accounts in the books of Hadith compiled, the death penalty should be implemented in such a way that the minimum sentence to be endured harassment. According to the Shiite News (News ID: 2302, Date: 17/10/2008) quoted Ayatollah Mohammad Taghi Bahjat web site, he has a question Can a person be sentenced to death make himself no sense or someone make him no sense before the execution in organ retaliation? Can a person be sentenced to death make himself unconscious or someone make him unconscious before the execution?

This marja wrote in reply:

(It is permissible to numb it before death or the murder before they anesthetized him, but if it is possible for your life is obligatory upon him to do so, the rejection of self-harm and harassment, such as transplantation after stopping). But under the second that the owners are many, attached to it that cannot be appealed to stupor or unconsciousness, like Ayatollah Fazel Lankarani, Mousavi Ardabil (Jalali et al, 1390, p.19 - see fatwas Mousavi Ardabil, 1377,444) and Safi Golpayegani (See fatwas software treasure Justice, questions 6,7,8 and 5105) Under current law, that will not only stun unconscious and committed member of the retribution, not above anesthetise committed in retaliation for with the philosophy of retaliation cannot conflict. Because the criminals commit crimes, the crime of knowingly and alert all the time so the purpose is to commit murder must be vigilant. Regardless, it should be criminal to destroy souls easiest and most pleasant way possible should be allowed because it is not criminal to stun and stupefy. It is true that criminal punishment should be the easiest and least painful way possible, but this should be done with caution in the criminal would be done in person. Measures should be considered the easiest, best and least painful way that it all ends and objectives Legislator of the death of such person, time, mind, body, and so be eligible for the relaxation time has employment and self-destruction is the way it should be.

Result of the use of anesthesia and results in the destruction of criminal

Recently, there have been comments that the death and life withdrawn from the criminal practice of can be made to organ donation, according to the use of such an approach requires a rigorous review and is emerging issues and the last of those books and validity of the permit or license for any reason does not exist or cannot be found in such a manner that it should review the terms of Grand international community in the contemporary and the jurists and of this is the What challenges will face. Some of the researchers in this field have made the argument that the use of such an approach is permissible under have turned to it explains: The condition territory of equality is emphasized that the acceptance of the view that the promise of equality in the manner and quality of crime with the punishment sentence, criminal punishment can only be a way through which it has committed a crime. So in this case the benefit of others through organ donation practices, including retaliation would be impossible. But the way it was done in retaliation has already been the subject of Imami jurists known as the former view has not been. So inevitably the same quality in the way the crime was not committed. But the

argument is not a bit disruptive manner. Imami jurists' rule that determines how well they have performed. So in that case the way organ donation is consistent with the criteria proposed benefit of this method is the implementation of the death penalty would be permitted. According to the criteria applied in Imami jurists thought to benefit from the low range of the most popular methods of punishment is the punishment, retribution can be of organ donation, did. First, because in this way the criminal unconscious in the operating room and then out of the core members of his body, his life will end. The result is the benefit of this approach (self-destruction) will be not only the principle of equality, but it is clear that this method of anesthesia used will be the least pain to the criminal (Javan jafari et al, 1391: 71).

Using this approach, we have doubts that it will address the following:

First - The death of the evidence that can be achieved by the suffering of death, death of features that resemble those in authority, is required. It can be said that the narration attributed to Imam Hassan Askari (AS) on the execution time achieved so much pain and suffering for the punishment of crime, usually of the natural essence of mystics, and of crime, it is diverse (minimum pain).

Second - Another major drawback is the lack of awareness of organ donation in this manner is guilty. In other words, it is possible even when the anesthetic takes away the life of these alternative approaches are death by hanging for or other methods (negation of life when the criminal misgives of consciousness).

Because of the absence of consciousness and anesthesia is different from other methods, so it would be easy to say if we want to make easy method of anesthesia is so decollate, the execution of rope Shelling and without a the first we then executed our intelligence. It demands that the punishment of criminal consciousness exist.

However, there are two exceptions:

The first is that if a criminal act against the victim or the victim in a state of stupor or unconsciousness is located right where he wants it for himself.

Second, if the victim or the victim's family against retaliation satisfied that it is in a state of stupor or unconsciousness would be possible.

Third - Forms schemes to destroy the self-condemnation of these practices is that organ donation is not a crime, so much the spirit of equality is no removal of his body. In the final section of the paper will outline the research hypothesis that will meet these problems and many other challenges.

Fatwas of the references in the Donating Members Sentenced to Death

In the fatwas of some contemporary scholars as the problem of death by organ donation (by some Excellencies) has been accepted. Below are some of the fatwas with Grand answers have been proposed. Question - (in the case of convicted murder, Could the judge or the judge postpone the death penalty if the victim's family consent to organ donation to save the Muslims from disease or death?).

Responses are provided below:

Ayatollah Makarem Shirazi: ((if consent is permissible for her death and no major damage, but so does the external reflection, and improper pretext to the enemies of Islam, should be avoided)).

Ayatollah Mazaheri: ((with the permission of the presiding judge is permitted)).

Ayatollah Sanei: ((about death through organ donation subject to the consent of the tail and criminal))

I have two questions from Ayatollah Khamenei that the issues mentioned in your response to the ambiguities and practical challenges in the legal and judicial system to be effective.

- 1- Is it possible to sentence a person to death by removing her internal organs, including members he gave?
- 2- The same question about their satisfaction with convicts sentenced to life imprisonment, what is it?

Ayatollah Safi Gplpayegani: ((in each premises is not permitted.)).

3- Ayatollah Sistani:

((The function is forbidden, there is no difference between the death penalty, etc.)).

It is necessary to note about the above comments about the fatwa of death and organ donation has been made in its implementation way. What seems to be the answer to the above is that the scholars have accepted the principle that death through organ donation but its implementation has been subject to the prior consent of the criminal and the victim's family.

Uncertainty study (removing organs from the bodies of criminals much effect on the requirements of the principle of equality)

According to the traditions that they passed the criminal and the victim's family do not have to choose the manner of retribution but since the purpose of this procedure is the removal of organs and transplant it to the people who need decided consent of the criminals. Another question that has been discussed in the context of the criminal members is money. Sentenced to death for transplant organ of the body, it picked the Muslim needs of patients and save their lives, requires proof of insurance?

According to these questions are among the emerging issues and the review that we have done in this area so we did not have an answer can be answered because next of kin has no right to take the life of a criminal and

the criminal body belonging to a criminal, therefore, prior to the execution of this assignment, compensation practices and use cases that we cannot do so if the consent to take members of criminal not to body.

Death benefits through organ donation:

It is a major benefit in this way:

- 1- Less pain tolerance for criminals.
- 2- Spiritual comfort and relief from guilt to some extent.
- 3- The economic benefits for the survivors are criminal.
- 4- Supplies for needy members and prospective members receive.

#### Conclusions:

According to the ever changing life style stripping of prisoners sentenced to death (of the new and less painful than the traditional way) according to the Quran and the hadith, and the scholars and jurists have deduced we can conclude:

The famous view of Imami (perfect equality is not accepted and the qualities of the execution of such conditions has been revoked and the following equality in punishment of crime has been spent) criminal matter is enough to destroy even the murderer, the victim's again, the purpose of punishment is like destroying criminals. On the other hand in the murder, the murderer must be the best and least painful way possible retaliation because the Imami view of the scope of the equality clause, simply follow the criminal entitlements of criminal crime, namely the destruction not in circumstantiality following criminal conduct. Therefore, based on the interpretation of criminal punishment should act in a manner that does the least amount of pain and suffering endured. According to the relevant style of execution as well as the execution of a specific tool, one can conclude that tools like swords in their narratives point to the example, this means that at that time the fastest, the most commonly used means that it is possible to act quickly because the criminal had less pain tolerance. Another question that arises here is whether the deprivation of life shall be awarded to the legislator considered for all intents and effects will be realized? Certainly some of the effects that the legislator intended that punishment for purposes such as relief effects are expected for the next of kin (to prevent accumulation obsession, vengeance, hatred and frustration in the long-term incidence) and containment atmosphere and the measured spectra likely penetrates the victim in fear of death and the unconscious (fear of) and a significant portion of the impact of the image and the image type is induced death. It seems that instead of giving absolute rather than switching to other methods such as hanging, etc. These effects will be less or no place, so we're here to give details of the sentence, type of crime, its impact on the community, whether related to direct contact (next of kin) and the community related to the indirect relationship between (all of urban, human) as well as personal and social characteristics of Crime work (its position in the community, and other factors that cause actions such other factors) and environmental Crime (mental attitudes, cultures and ethnic prejudice and tribal the governing environmental crime, etc.) are considered.

#### Suggestions

Author Suggestion:

- 1- The execution of a rational approach to organ donation (including the possibility of rational scientific possibility), but it is subject to empirical detail and overall atmosphere of the space to fit the conditions governing the mandate. In other words, it will have to give details on the implementation issues of the social context, criminal history and the most important decision feedback and its impact on victims and society and the geometry of the sentence in International Law and International reactions to the verdict and noted.
- 2- The precursor or the researcher's hypothesis

Before the governing body in this manner ( Donating Members prisoners sentenced to death ) , and all of the above questions ( the results of the use of anesthesia ) is caused by: Criminal cause of death in the brain , using techniques less pain medication or injection case ( brain death ) as offenders .

The following description is presented in such manner legitimacy:

- A- Donation from brain dead individuals is legitimate.
- B- The punishment should be a minimum amount of pain (pain that is said to be the punishment for the crime is usually normal and customary nature, the original crime, it is a species).
- C- Also in case of suspicion of the murder of consciousness response is :
- 3- Features Hypothesis
- A- This method has been convicted of brain death (assuming verification) and after sentencing (in the form of brain death) is treated like a normal person than he is donating members (parents' consent). This method of risk for criminal punishment, forgiveness and is provided with. On the one hand, with the consent of the next of kin offender is sentenced to a brain dead relative on the other hand destroy criminal offenders are punished.
- B- The premise being indulgence doubt about the interpretation of the principle of equality and disinterested members of retaliation and necessity or lack of necessity and satisfactory answer to the criminal because the

criminal verdict. (Death cerebral) like ordinary that harvest members she is quite a common condition that stops the consent of the family or the offender is punished.

C- Other than the sin of the clean look of being a relative of the offender, especially a donating member: Criminal trespassing and rebellious spirit of his body as a result of the votes of all the scientific elite (jurisprudence, theology, ethics, psychology, philosopher, mystic, etc.) has been guilty of grave the effects of individual actions and thoughts of darkness portability he was a member of the guest domain host has an individual need to be a member. By doing this way, criminals, punishment, and therefore subject to positive influences and polishing of his members of the Atonement and the prohibitions of epistemic attitudes to organ donation, there is no such person has, or at least less harmful.

D- On the other charges, which may realize the potential of human rights organ donation is a way to block the execution because of the execution (brain death) and delivered to the authorities body punishing the offender is possible organ donation, he it human, natural and adopted by all nations.

E- On the other hand, even though one of the stripping of brain death as a criminal life within other methods such as hanging up a significant advantage of this method is still not accepted that the answer ambiguities of (from the results anesthesia) will destroy the criminal because this method of brain death (without anesthesia) and started out with the members of the execution ends.

Such a method would be applicable in the event that:

A- The clerics and lawyers, as well as the international community on human rights as another example the criminal life like stripping tools, electric chair, firing, etc. will be accepted.

B- To extend the successful implementation of the lab is actually exist in space.

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