




# Jurisprudential and Legal Analysis of Organ Donation by Death Row Inmates

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The aim of the present research is to explore the jurisprudential and legal aspects of organ donation by death row inmates. The research method is descriptive-analytical, utilizing library resources. Although there are clear laws on organ donation in the country, this phenomenon, which is highly beneficial, requires cultural promotion and education. This should be done so that not only death row inmates but also everyone may come to the realization that if they are in a state of brain death, donating their organs to save the lives of others is a commendable act. Indeed, the mere act of organ donation to save a dying patient exemplifies the divine verse that states saving one life is akin to saving all of humanity. Consequently, such a noble deed certainly invites God's forgiveness and mercy, and it is even possible that some of the individual's sins may be pardoned. From a religious standpoint, the act of applying a punishment for sin is not negated. Thus, promoting and advocating for organ donation from death row inmates according to the existing laws of the country could serve as a suitable solution for reducing the challenges faced by patients in need of organ transplants. According to the law, organ transplantation applies to deceased individuals or those in a state of brain death. Therefore, a condemned person is considered deceased or equivalent to deceased, and if the donation is carried out with the inmate's consent and in accordance with their will, as stipulated in Article 6 of the Executive Regulations for the Organ Transplantation Law of Deceased or Brain-Dead Patients, there is no legal issue.

**Keywords:** *Organ donation, death row inmates, retribution (qisas) of life, Islamic Penal Code*

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## 1. Introduction

Over half a century has passed since the first organ transplant was performed in Iran. In modern times, advancements in medical science, particularly in the field of organ transplantation, have saved the lives of many people. The introduction and development of organ transplant-related sciences in our country have always sparked numerous new debates, including the question of whether qisas (retribution) for life can be

executed through organ donation. Despite the importance of the subject, no independent discussion has been observed in the existing authoritative jurisprudential and legal sources. To achieve this objective, we will first analyze the linguistic meaning of the term "qisas" and its cause, and then we will address the critical issue of whether the method of execution in the punishment of qisas for life is relevant. We will then conduct a detailed examination of the concept of equivalence and review the perspectives of Imami jurists



on this matter. In the second section, based on the results from previous discussions, we will strive to answer whether it is possible to execute qisas for life through organ donation.

The punishment of qisas, derived from the root (qas), meaning to follow or trace the effects of an act, is the primary and principal penalty for the crime of intentional murder. In Arabic, events that occur in succession are referred to as "qissa," and since qisas for life follows an act of murder (Mousavi Khoi, 1992), this term is used in this context (Makarem Shirazi, 2004). In *Majma' al-Bahrayn*, Tabrizi explains the term qisas: "Al-qisas, with a kasra, refers to the name of retribution and punishment before the crime of murder, mutilation, or injury, and its root means to follow the trace, so the avenger follows the trace of the criminal, acting as the latter did" (Mentadi Tehrani, 1987); meaning, "... qisas is a punishment executed in response to crimes such as murder, mutilation, or injury, where the condition of following the trace of the crime is essential. Thus, the one avenging the crime acts in accordance with the criminal's act."

In the view of jurists, qisas is defined as: "Qisas is a punishment imposed by law and carried out by the victim or their legal guardians against the perpetrator, and it must be similar to the crime committed by the offender as determined by law. Hence, the crime and the punishment must be alike" (Jafari Langroudi, 2006). Jurists consider the cause of qisas for life to be the commission of intentional murder, and they have defined intentional murder as: "It is the deliberate and hostile act of taking the life of a person whose blood is protected." Thus, the cause of qisas is the commission of an intentional crime, and equivalence is a condition in qisas. Jurists describe qisas as a punishment prescribed to fulfill equivalence with the crime committed (Mentadi Tehrani, 1987).

We will then explain the meaning of the aforementioned equivalence. Is this equivalence so emphasized that even the extent of the pain inflicted on the perpetrator must match the pain suffered by the victim? In other words, is the purpose of executing qisas for life merely to cause the perpetrator's death as a result of qisas, or does the method of execution also matter due to the condition of equivalence? Hence, in this research, special emphasis is placed on jurisprudential and legal arguments and reasoning. We seek to determine whether it is at all

possible to execute qisas for life through organ donation and, if so, whether the consent of the victim's guardians is a requirement in this method.

## 2. The Condition of Equivalence and Its Importance

As previously mentioned, the linguistic meaning of qisas entails following the trace of the crime, or the condition of equivalence. The punishment of qisas is fundamentally based on the essential condition of equivalence; therefore, the scope of this condition must be thoroughly examined, as accepting any of the aforementioned perspectives would have specific and varying implications. If the scope of the equivalence condition includes the method of execution, then using any method other than the one employed by the criminal would not be permissible.

Some jurists, referring to the linguistic meaning of qisas and some narrations, have argued that complete equality in consequences and conditions is a fundamental aspect of equivalence. Conversely, others, relying on Quranic verses, different narrations, and the linguistic meaning of qisas, have not considered equivalence in the degree of pain or type of punishment as a requirement. In their view, the scope of equivalence is limited to following the trace of the crime, which is the taking of the criminal's life. We will first detail the opinions of jurists who believe in equivalence in the conditions of qisas and then discuss opposing views.

Proponents of equivalence in the conditions of qisas argue, based on the linguistic meaning of qisas and narrations, that not only is following the trace of the crime (following the effects) essential, but that equality in the conditions of qisas is also required. They assert: "The general understanding from the evidence on the legislation of qisas indicates homogeneity and equality (equivalence and parity) in quantity and quality between the crime and the punishment." They have supported their view using the Quranic verse: "If you punish, then punish with the equivalent of that with which you were harmed; but if you are patient, it is better for those who are patient" (Quran, 16:126).

Another argument presented by proponents of equivalence in the method and conditions is: "The purpose of qisas is to satisfy the emotional needs of the victim's heirs, and this is only achieved if the perpetrator is killed in the same manner as the crime" (Fadil Miqdad, 1984, p. 445). Here, the aim of qisas is seen as fulfilling

the emotional satisfaction of the victim's heirs, and they argue that complete satisfaction is achieved only when equivalence in conditions, even in the instruments used, is observed. However, it seems unlikely that the sole purpose of qisas is to provide emotional satisfaction to the victim's heirs. In this context, it should be noted that the verse "And there is for you in qisas [saving of] life, O people of understanding, that you may become righteous" (Quran, 2:179) expresses the philosophy behind qisas. As stated, qisas is a punishment designed to ensure individual and social life (Mousavi Khoi, 1992). In this regard, it is sufficient to say that qisas is a manifestation of a progressive criminal policy based on the sovereignty of the victim and guarantees social life. Therefore, the emotional satisfaction of the victim's heirs can be considered one of the effects achieved after the realization of this philosophy. Fadil Miqdad in *Kanz al-Irfan* said: "Qisas prevents and deters murder, and deterring murder essentially preserves life for people, making qisas a source of social life" (Fazel Meqdad, 2007).

Additionally, the majority of Imami jurists advocate for qisas using the easiest and least painful method. Al-Shahid al-Awwal in *Lum'ah* adhered to this view, forbidding mutilation of the perpetrator and permitting qisas only with a sword (the least painful method). Shaykh Tusi in *Al-Mabsut* stated: "One can only cut the perpetrator's neck with an unpoisoned sword" (Tusi, 1991). Al-Muhaqqiq al-Hilli in *Sharayi' al-Islam* followed this opinion, forbidding the mutilation of the perpetrator (Mohaghegh Hilli, 2007). He further stated that qisas for life could only be carried out with one blow to the neck using a sword, regardless of how the crime was committed. He reiterated this opinion in *Mukhtasar al-Nafi* (Hilli, 1995). Ayatollah Khu'i in *Mabani Takmilat al-Minhaj* (Mousavi Khoi, 1992), Imam Khomeini in *Tahrir al-Wasilah* (Imam Khomeini, 1382), and Ayatollah Sayyid Ali Tabatabai in *Riyadh al-Masa'il* (Tabatabai, 1412) have all supported this view.

Thus, it is evident that the majority of Imami jurists have rejected the requirement of equivalence in the conditions of punishment and the crime, limiting the scope of this condition to following the trace of the crime, i.e., taking the life of the criminal. In other words, the terms "qas atharahu" and "following the trace" refer to the act of taking the criminal's life as a consequence of the crime, not to matching the conditions of the

punishment with the crime committed. Moreover, Imami jurists have emphasized that the deprivation of life should be carried out in the best possible manner, causing the least amount of suffering for the criminal.

### 3. Results from Previous Discussions

From the perspective of Imami jurists, there is no need for equivalence in the conditions of the punishment with the crime committed when enacting qisas for a murderer. The condition of equivalence refers to equality in the effect of the crime and the punishment, meaning the taking of the criminal's life. On one hand, prominent Imami jurists emphasize the use of the sword for carrying out qisas, which implies the least painful method for the execution. On the other hand, the acceptance of modern methods for executing qisas, such as shooting, which may be less painful than the use of the sword, by some contemporary jurists leads us to consider that the method of execution does not hold intrinsic importance. What is emphasized by the Imami jurists is inflicting the least amount of suffering on the criminal during the implementation of qisas. Therefore, it can be inferred that if new methods causing even less pain are available, their use would be permissible.

In religious inquiries made to some contemporary jurists, the basic issue of qisas through organ donation has been accepted. These inquiries, however, contain a crucial question that addresses other concerns we have in this area.

In a shared question posed to these jurists, the following response was provided: "If a person condemned to qisas for life consents to the donation of organs and transplantable tissues, can the qisas punishment be carried out by removing vital organs, such as the heart?" (under two assumptions: with and without the consent of the victim's guardians).

Organ donation, if it does not result in the donor's death, does not disrupt the execution of the qisas punishment, and the victim's guardians may exercise their right to qisas after the donation. However, donating an organ that leads to the death of the condemned is only permissible with the consent of the victim's guardians (as cited from the Judicial Research Center's website).

In response to the question, "For those sentenced to qisas, can a judge or religious authority, with the consent of the victim's guardians, defer the punishment in favor

of organ donation to save a Muslim from illness or death? What about those sentenced to qisas for bodily injury?"

The following responses were given:

Ayatollah Mazaheri: "With the permission of a religious authority, it is permissible."

Ayatollah Makarem Shirazi: "If the condemned consents and it does not cause significant harm to them. However, it must not reflect poorly externally."

Ayatollah Sane'i: "In the case of qisas through organ donation, it is contingent upon the consent of both the victim's guardian and the offender" (as cited from the Judicial Research Center's website).

Regarding the above views, it is essential to note that the inquiries relate to qisas for life and its execution through organ donation. The question raised under the inquiry, "What about those sentenced to qisas for bodily injury?" explicitly addresses this significant point.

What is inferred from the above responses is that the aforementioned jurists have accepted the basic issue of qisas through organ donation but have conditioned its execution on the consent of the victim's guardians. As previously discussed, qisas is a manifestation of an advanced criminal policy where the victim's role holds significant importance. Accepting methods of execution such as qisas through organ donation raises the question of the victim's guardians' position in this context. Is obtaining the victim's guardians' consent necessary when implementing qisas for life through this method? The inquiries also address this matter. Thus, it is appropriate to examine this issue further to complete previous discussions. From the examination of issues related to the scope of the condition of equivalence and the method of execution in qisas for life, it can be understood that what is referred to as the discretion of the victim's guardians in qisas pertains to their choice to either request or forgo the execution of qisas. However, the guardians do not have the authority to choose the method of qisas execution.

#### 4. Qisas through Organ Donation

According to Article 263 of the Islamic Penal Code: "Qisas using a dull or non-sharp instrument that causes undue suffering to the offender is prohibited, and mutilation of the offender is a crime."

The literal text of this article explicitly prohibits equivalence in suffering and authorizes qisas in a way that does not cause undue pain to the offender. In this

regard, the Islamic legislator has followed the opinion of prominent Imami jurists. Article 14 of the regulations on the implementation of qisas, murder, stoning, crucifixion, execution, and flogging, approved on November 25, 2003, further clarifies Article 263: "The execution of qisas for life, murder, and execution may be carried out by hanging, shooting, electrocution, or another method as determined by the sentencing judge." If the sentence does not specify the method and quality of execution for qisas for life or murder, the condemned will be hanged.

As indicated by the text of the article, equivalence in suffering is not recognized by the Islamic legislator. The methods of qisas execution listed in this article are illustrative and are the ones that cause the least amount of suffering for the offender. Furthermore, the illustrative nature of these methods suggests that the legislator is open to recognizing other methods that may be developed in the future due to scientific advancements, provided they inflict minimal suffering. Implicitly, this provision allows for the use of methods such as qisas through organ donation. However, it should never be assumed that using these methods during the implementation of qisas for life contradicts the philosophy and logic of qisas. In reality, qisas represents an advanced criminal policy in which the criminal justice system, by implementing it, aims to ensure both individual and social life. When life is taken from the offender during the execution of qisas for life, justice is fully served, and the logic of qisas is realized.

#### 5. Advantages of Organ Donation Instead of Qisas for Life

There are numerous advantages to carrying out qisas using this method. Not only does it cause less suffering compared to other methods of executing qisas for life, but it also brings a sense of spiritual tranquility and emotional relief to those sentenced to qisas. A person condemned for intentional murder, who has lost the right to life and faces divine retribution, may find that consenting to qisas through this method causes them to experience minimal pain and suffering compared to other methods. Additionally, they may attain spiritual peace and benefit from the spiritual rewards of this action.

Moreover, the economic impact of implementing punishment in this way should not be overlooked. In

many cases, particularly when the criminal plays a crucial role in the economic support of their family, executing qisas for life could disrupt this economic stability. However, using the method of organ donation and compensating the criminal's family for the donated organs can help alleviate some of these financial difficulties.

## 6. Conditions for Organ Donation from Death Row Inmates

Religious scholars believe that a body is purified of sin through the enforcement of legal punishment, but the question remains as to how the soul and spirit of a person can be purified. One potential way is through good deeds left behind after death, and organ donation could be considered such a deed. A criminal or death row inmate, who usually repents before the execution of their sentence, may have their body purified through the punishment. If such a person wills that their organs be donated to needy patients after their death, their soul may also be forgiven, gaining eternal peace. There are ongoing discussions among scholars, jurists, and legal experts on whether a person sentenced to execution can will their organs to be donated to patients in need after their execution. This action is feasible under three conditions: 1) It must be done with the free and willing consent of the condemned individual, 2) The medical and technical aspects of organ transplantation must allow the organs of the executed person to be usable for living recipients, and 3) Death must occur as a result of the execution, not from organ donation.

Additionally, it should be noted that, under the principle of "tassallut," people have authority over their property and their own bodies. Although there is some debate over the inclusion of "anfas" (selves) in this principle, some interpretations accept that the principle extends to one's physical being. It is widely known that suicide is forbidden, but this case differs from suicide. The reason for the prohibition of suicide is that it signifies despair of God's mercy, whereas in this case, the condemned person, acting with free will under a lawful execution order, is making a choice unrelated to taking their own life.

Article 365 of the Islamic Penal Code states: "In cases of murder and other intentional crimes, the victim can, after the crime and before death, waive their right to qisas or reach a settlement, and the victim's heirs cannot

demand qisas or compensation after the victim's death" (Islamic Penal Code, 2002). This article, which embodies the principle of "tassallut," suggests that people have authority over their lives and bodily integrity. Importantly, there is no legal obstacle to organ donation by prisoners on death row, as the law on organ donation (passed in March 2000) applies to all individuals, including death row inmates. However, the removal of organs must only occur after brain death or the confirmation of death by medical specialists.

In some other countries, like China, similar laws exist, although they appear not to respect the free will and consent of the condemned. Due to widespread human rights protests, such practices may soon be banned, as organs are often forcibly taken from prisoners.

The greatest concern in this matter may be the normalization and acceptance of organ donation in society, which requires cultural promotion rather than new laws. Although clear laws on organ donation exist, significant efforts must be made to educate and promote the practice, not only among death row inmates but among everyone, to encourage people to save lives if they are declared brain-dead. This noble act is praiseworthy.

A common question is whether there are any religious or ethical objections to organ donation in such cases. Specifically, does donating the organs of a murderer or corrupt individual, even with their consent, have any religious prohibitions or moral consequences? While I do not hold this belief, it is understandable that the recipient of an organ may wish to know the background of the donor. Some individuals may refuse to accept the heart, kidney, eye, or other organs from a person who has committed murder or another crime. Nonetheless, the act of organ donation to save a person on the brink of death aligns with the Quranic verse: "Whoever saves a life, it is as though he had saved all of mankind."

Such a great deed certainly brings divine forgiveness and mercy and could lead to the pardon of some sins, with the legal retribution for the sin being nullified. Therefore, to promote and cultivate this benevolent act, all institutions and authorities must make serious and reassuring efforts on a large scale, ensuring that the donor's free will is never compromised. With this principle as a guiding rule, the involvement and role of every individual in promoting this humanitarian act, whether concerning death row inmates or in other cases, are commendable and valid.

## 7. Organ Donation by Death Row Inmates

From a legal perspective, three conditions must be met for organ donation from a deceased person to a patient: First, the body must be in a healthy condition, and the organs must be functional for the recipient and free of life-threatening or specific diseases. Second, the consent of both the donor's guardians and the recipient must be obtained. The third condition is the absence of any legal prohibitions concerning the procedure of organ removal and that it does not conflict with the regulations of the Ministry of Health. The demand for organs from patients and the presence of death row inmates raise the question of whether the organs of an executed individual can be transplanted to a patient. The answer is that not only is this practice permissible, but it is also commendable and beneficial.

This practice undoubtedly improves public mental health and fosters a culture of altruism and forgiveness. Additionally, it saves the lives of several patients whose survival may be at risk due to the lack of available organs. Some may raise concerns, suggesting that people would not want the organs of a criminal. In response, it should be noted that a criminal is only considered as such until the punishment has been carried out; once the punishment is executed, the individual is no different from anyone else. Particularly in cases of qisas, offenders often repent before the execution.

## 8. Conclusion

An examination of the views of prominent jurists and legal scholars reveals that they consider the condition of equivalence in qisas to only pertain to the consequence of the crime and not to the quality of the crime or the method of punishment. Moreover, prominent Imami jurists believe that the method of qisas does not hold intrinsic importance. However, this does not imply that the method of execution should be arbitrary; prominent Imami jurists agree that the punishment should be carried out in the least painful and easiest manner.

Based on this understanding, it is evident that qisas for life could be carried out through organ donation. This method meets the equivalence requirement (i.e., the taking of life) while also inflicting minimal suffering on the offender due to the anesthesia administered during the procedure. It should also be emphasized that the consent of the victim's guardians is not required for

organ donation in the context of qisas. The role of the victim's guardians pertains to their decision on whether to request or forgo qisas and does not extend to control over the physical integrity of the offender. However, the offender's consent is necessary for this method because, in addition to the taking of life, the removal of organs is an additional act beyond the original punishment. Therefore, the offender's consent must be obtained for this excess.

Religious scholars believe that the body is purified of sin through the enforcement of legal punishment, but questions remain about how to purify the soul and spirit. One way may be through good deeds performed after death, such as organ donation. A criminal who is about to face qisas or execution usually repents before the punishment, and their body is purified through the punishment. Nonetheless, there are ongoing discussions among scholars, jurists, and legal experts. It should also be noted that, according to the principle of "tassallut," people have authority over their property and their bodies. While there is some debate about the inclusion of "selves" in this principle, a version that includes the self is accepted by some.

It is universally known that suicide is forbidden, but this case differs from suicide. The prohibition of suicide stems from despairing of divine mercy, whereas, in this case, the condemned person, by free will and under legal execution, makes a decision that is unrelated to taking their own life.

It is clear that there are no legal obstacles to organ donation from death row inmates, as the organ donation law (passed in March 2000) applies to everyone, including condemned prisoners. The organs must be removed after brain death or when medical specialists confirm death. The main challenge lies in normalizing and culturally integrating organ donation in the country. Clear laws exist, but promoting organ donation requires cultural education so that not only death row inmates but everyone understands the value of donating their organs if they are brain-dead. This noble act deserves praise.

While I do not personally hold this view, it is understandable that organ recipients have the right to know the identity and background of the donor. Some people may not want to receive the heart, kidney, eye, or other organs from a person who has committed a crime. Nevertheless, saving a patient on the brink of death

aligns with the divine verse: "Whoever saves one life, it is as though they saved all of humanity." Such an act certainly invites God's forgiveness and mercy, potentially absolving the donor of some sins and fulfilling religious justice.

If someone severs an organ that is subject to qisas and the victim reattaches it through surgery, the person with the still-missing organ may demand it be removed again. However, if a different organ is grafted, the other party has no right to object. If someone severs a limb subject to qisas, and the victim reattaches it before qisas is executed, the right to qisas is void, and determining compensation becomes difficult, with any damages decided by the government.

In cases of qisas for limbs, it is necessary to wait for the outcome of treatment. If the reattached limb heals, qisas is canceled; if not, qisas remains. This applies when the same severed limb is reattached, not when a different organ is used.

In my view, organ donation from death row inmates, according to existing laws, could help alleviate the shortage of organs needed by patients. The law permits organ transplantation from deceased or brain-dead individuals, which includes executed prisoners if they consent or leave a will. If the execution and organ donation occur in a controlled manner, the benefits are immense. The offender would face minimal suffering, in line with Islamic and humanitarian principles. By donating organs, several patients could be saved, and prayers from the recipients could bring peace to the soul of the executed individual. Additionally, financial compensation from the donated organs could support the families of the executed, reducing social harm caused by poverty. This innovative approach aligns with modern science, law, and religious principles. Therefore, judicial authorities should take bold steps to facilitate this method and develop an implementation framework.

### Authors' Contributions

Authors contributed equally to this article.

### Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

### Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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