

# Islamic Descriptions of Human Bodily Dignity in the Dead

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## Abstract

There is a serious shortage of organs for transplantation in the UK. This is even more problematic for the UK Muslim community of South Asian ethnicity, as they are at greater need of organs than others, yet they are less likely to donate. It is shown that this is because of their perception about the body, its dignity, and the inter-relationship between the person, her body and God. This normative concept of human bodily dignity and its violation is poorly understood in view of contemporary western bioethical considerations.

This article will examine Islamic understandings of violation of bodily dignity and the ethical-legal relationship between person, body and God, as viewed by the classical Muslim jurists of the past in their legal verdicts and the contemporary Muslim scholars' interpretation of these texts. A scholarly objective account of the differing descriptions will be provided, detailing how all this reflects on modern day medical ethical issues.

## Introduction

Current literature referring to cadaveric human organ use from an Islamic perspective generally refers to rulings that govern the type of actions vis-à-vis the human body, and draws parallels between the kinds of discourse that was present in the early classical text of Muslim jurists to tangible modern bioethical considerations today. This has proved to be quite challenging and has led to an uncomfortable hardening of sensibilities and attitudes towards the conception of self and body.<sup>1</sup> The most important factor which is seen to be the limiting concept to what we are permitted to do with our bodies is the violation of human bodily dignity and integrity (ikrām al-ādmī). There is a lot of classical literature in books of fiqh (Islamic substantive law) which makes mention of human dignity ikrām al-ādmī when this human bodily dignity is to be preserved and not violated.<sup>2</sup> Contemporary Muslim jurists have described human bodily dignity or inviolability (ḥurma) in different ways. They all refer to the preservation of the integrity of the human body as a means of preserving this dignity, in the living as well as in the dead. However, it is unclear what they mean by ḥurma of the body and how this reflects on our current bioethical understandings of human bodily dignity. This article is an attempt to present some coherence to these normative descriptions.

## Modern day bioethical and philosophical understandings of human dignity

Those who do not assign intrinsic value to the body argue that the body is of instrumental or incidental value and not essential value, and if mental life could survive outside the body, then the body would have no moral significance.<sup>3</sup> Its value only exists in relation to the human person being an embodied being. Once the person is removed, the body is just a shell that can be potentially used for other goods. This view employs an extrinsic value to the physical body, as the person-orientation view. Others disagree, and consider the body as something much more. It is our person and soul and relates to our moral self. The body has a value that extends beyond the individual as a means of establishing social identity and social behaviours.<sup>4</sup> Our psychology links itself to the body both in terms of self-agency (control over the physical self) as well as self-coherence (preservation of the non-fragmented self as an integrated whole), both of which are considered necessary attributes of a healthy psychology.<sup>5</sup> This intrinsic value to the body view employs sacredness or an intrinsic value to the physical body in a socio-political order, which extends to its natural, biological order<sup>6</sup> as the body-orientation view.

Respect for bodily dignity and integrity can be viewed from two diverse views- the person-orientated and the body-orientated view. Western bioethics gives more weight to the person-orientated view, which is based on respect of persons and autonomy.<sup>7</sup> The body-orientated view refers mainly to duties to one's own body rather than others. As a result, it can conflict with the person-orientated view, in that it is not always consistent with personal autonomy and self-determination. This intrinsic value to bodily integrity implies that our body is not entirely owned by us and that we are prohibited in doing certain things to our body that violate its dignity. This body-orientated approach is found mainly in religious doctrine such as the monotheistic traditions of Judaism, Christianity and Islam, and can also be found in classic Greek and Roman thought, as well as in the works of philosophers such as Aquinas, and Kant.<sup>8</sup>

Most of the literature on the body-orientated view can be categorised under two general approaches to bodily integrity<sup>9</sup>.

**1. The biological approach to bodily dignity** – This refers to the functional body as an integrated whole, made from anatomical and physiological parts. Violation of the bodily integrity in this view refers to two notions;

(i) *The intactness view*– this includes any form of physical injury, mutilation or removal of organs. Even if the functioning of the body is not compromised as a result, such a procedure requires justification.<sup>10</sup> The dead body, therefore, also possesses this integrity, which demands respect. In contrast to the living, invasive procedures on the dead body require greater justification. The reason for this is that invasive procedures on the living may be justified in preserving the well-being of the person, which is not the case for the dead.<sup>11</sup> Islamic literature refers to this as mutilation (*tamthīl*) of the body – The human body (*al-jasad*) is not to be physically mutilated and unjustly tampered with. Excision or procurement of an organ from an individual's body, where there is no benefit for him, is considered mutilation (*tamthīl*).<sup>12</sup> This act is a violation of that which belongs to God, and serves no purpose or benefit to the one whose body is violated. The offence of mutilation extends to the dead corpse also, and both the dead and alive are equal in *ḥurma*. The Prophet Muhammad said, “Breaking the bones of the dead is a kin to breaking the bones of the living,”<sup>13</sup> and, “causing injury to a dead believer is similar to causing him injury when he is alive.”<sup>14</sup> There is a general consensus amongst most contemporary scholars that such an act is strictly prohibited (*ḥarām*) or at least disliked enough to be impermissible (*makrūh*)<sup>15 16</sup>. Al-Shaukāni<sup>17</sup> comments regarding the former *ḥādīth*<sup>18</sup>, that this *ḥādīth* identifies the caution required in ensuring that due care is taken in performing the ritual bath, shrouding, burial and other related acts, and that this applies to both Muslims and non-Muslims. He further states:

... if sin is committed against the cadaver, then there is no doubt that this is impermissible (*fī tahrīm*). And if there is injury, then, just as it is prohibited to cause injury to the living, it is prohibited to cause injury to the dead.<sup>19</sup>

The Ḥanbali jurist, Abu al-Khaṭṭāb<sup>20</sup> refers to this *ḥādīth* in context only to bones and not the flesh. He specifies that this *ḥādīth* relates only to prohibition and not the degree of prohibition.<sup>21</sup>

To excise or remove an organ or tissue from the living and equally in the dead is considered a violation of this dignity according to this description.

(ii) *The functional view*– this view permits invasive procedures and the removal of organs or body parts as long as bodily function is not compromised. This is the more universal bioethical view related to harm considerations<sup>22</sup>, which may permit the transplantation of non-vital organs from the living, depending on the balance of harms. Modern day thinkers make claim that the extent of violation of bodily integrity depends on how replaceable the organ is, and on how functionally dependant the body is on that organ.<sup>23</sup> Islamic literature refers to this as functional harm (*ḍarar*) to the body – Life is a gift from God and no one has the authority to destroy it without a justified cause acceptable to God. The functional component of our bodily integrity is what preserves life, and if the *ḥurma* of this functional component of our bodily integrity is harmed, then our life will suffer. God states in the Qur'ān, “Do not kill yourselves, for God is Merciful to you,”<sup>24</sup> and, “do not put yourself into destruction by your own hands”<sup>25</sup>. Suicide or any direct attempt to harm self is therefore prohibited, as this violates the dignity, *ḥurma*, of the human body. Allowing others to harm self, when there is no benefit for self or others, is also prohibited, because the bearer of life cannot authorise to destroy self without the behest of the originator of life; Almighty God.<sup>26</sup> The importance of preserving the functional component to bodily integrity is evident in the many concessions (*rukḥṣa*) that *sharī'ah* grants in difficult circumstances.<sup>27</sup> An example of such a concession is the permissibility of dry ablution (*tayammum*), as a prerequisite to the performance of daily prayers, instead of the obligatory wet ablution (*wuḍū*). This is in cases where water is scarce or harmful, and serves the purpose to prevent potential detriment to health. Another example is the concession given to the frail, the pregnant and the ill, in keeping obligatory fasts, so as to preserve health and prevent harm. It is considered permissible for individuals to consume wine, to the extent necessary to avert harm. This is for the one who is choking whilst eating, if no other drink is available. Other concessions are given for those who are weak and ill in performing their obligatory prayer and pilgrimage, and for the ill to consume unlawful medication when alternate forms of therapy are unavailable. All these concessions are granted in the *sharī'ah* to preserve the functional component of our

bodily integrity.<sup>28</sup>

This interpretation of bodily integrity is in line with the functional component of the body-orientated view, where to harm any part of the living body is prohibited. Distinctions exist between the intactness component and the functional component of human bodily integrity, in that the dead do not have a functional component, because their body has ceased to function in the worldly sense. This suggests that the functional component is specific only to the living. Another distinction is the strength of the functional component in comparison to the intactness component<sup>29</sup>, in that the violation of the intactness component to bodily integrity (mutilation) is tolerated to preserve the functional component to bodily integrity, on medical grounds, if it is proven to be of benefit to the individual.<sup>30</sup>

## 2. The objectification approach to bodily integrity –

Ethical concerns about body objectification are not about whether bodies can be objectified, because bodies are objects and objects cannot be objectified.<sup>31</sup> Rather, the ethical concern of objectification of bodies is in treating bodies as mere objects in terms of their use and their value. This would suggest that the body has attributes (in use and value), that are beyond other objects for them to deserve such respect in contrast to other objects. These attributes are the result of the intimacy that exists between body and the person. A living person's body demands greater value than that of the dead person's body. This, however, does not deny value in a dead person's body, but attributes a value, in so far as the respect accorded to the person who was, and whom that body belonged to, or in religious contexts that value the body possesses in its connection to a 'life after death'.<sup>32</sup> Violation of bodily dignity, in terms of objectification of the human body or parts, therefore, can refer to two broad views;

(i) *The Instrumentality view*– This view refers to the treatment of organs or body parts as mere tools. This view may be represented as a subjective view of an irreducible self as an integrated whole. It does not consider removal of organs a violation of bodily integrity, but considers their instrumental use in the transplantation process problematic, in terms of integrating something that belongs to one, into another as a means.<sup>33</sup> Transgressing rigid boundaries of self and others<sup>34</sup> as well as significantly physically changing the body, threatens and disrupts bodily integrity<sup>35</sup>. Islam describes this as objectification of the body<sup>36</sup> – The entire universe has been created for the benefit of mankind. Within reason man can use its resources to his benefit. "Indeed, We honoured mankind"<sup>37</sup> and "It is He (Almighty God), who created for you, all that which is on the earth"<sup>38</sup>. It would be contrary to this, if man's body or body parts were used, other than what God had ordained, as this would violate human bodily honour and sanctity.<sup>39</sup> Ibn Nujaym<sup>40</sup>, states that,

...it is not permissible to sell or make use (intifā') of human hair. This is because man is honoured (mukarram) and he is not to be defiled (mubtadhal). Therefore it is not permissible that any part of his body is objectified in an undignified way (muhānan mubtadhalan).<sup>41</sup>

The Muslim jurists describe the violation of the human bodily sanctity in this sense as a form of objectification, which can be interpreted in two ways; (i) instrumentality, and, (ii) fungibility.

### *Instrumentality*

The human body is moulded in the best of physical forms<sup>42</sup>, and every human body part has its natural form and purpose. This natural form and purpose must not be altered at will, but rather, it should be preserved in respect of bodily sanctity and dignity.<sup>43</sup> The Holy Qur'ān states:

He Who created you, then brought you in due proportion, then perfected you. In whatever form He wills, does he put you together.<sup>44</sup>

...[satan says:] I will lead them astray and tempt them with false hopes. I will command them and they will slit cattle's ears. I will command them and they will alter God's creation.<sup>45</sup>

Manipulating or changing our body in its form and use, from its natural or purposeful state, is a violation of bodily dignity. This is because it defiles the creation of God (taghayyar fī khalq Allāh).<sup>46</sup> Such an act considers the human body or its parts as instrument(s) that can be manipulated in form and use in accordance to our own fancies. The dead body and its parts should be buried as soon as is possible, as anything other than this is to misuse and thus dishonour it.<sup>47</sup> This instrumentality of the human body can be interpreted as a violation of the objectification component of the body-orientated view, which prohibits the misuse of human bodily parts as an instrument or for cosmetic purposes.

(ii). *The Fungibility view*– Fungibility is when a person is treated as replaceable with another similar or identical person or thing. It would be a violation of dignity to consider a person fungible, because a person is beyond price.<sup>48</sup> Whatever has a price can be replaced by something else as its equivalent; on the other hand, whatever is above all price, and therefore admits of no equivalent, has a dignity.<sup>49</sup> The dead body or parts can therefore also be interpreted as having a dignity, sanctity and integrity just as the living body, because they symbolise mankind.<sup>50</sup>

The human body is not fungible it is not interchangeable and has no price. To place a price on a human body part is to devalue it, because it is above price (māl ghair mutaqaawam). Therefore to sell a free man or his body parts, dead or alive, is prohibited. Body parts are

not interchangeable for monetary gain. They are not a commodity, and to consider them so, is to devalue them and to violate their dignity.<sup>51</sup> Ibn ‘Ābidīn<sup>52</sup> states:

Man is lawfully honoured even if he is an infidel; [making him the subject] of a contractual profit, abusing him therewith and attaching him to the inanimate is humiliation to him; in other words it is prohibited.<sup>53</sup>

If the corpse of a non-believer is considered honoured and cannot be objectified, as is stated in the ḥadīth, “there should be no sale involving the corpse of a non-believer,”<sup>54</sup> then it follows that the same would apply to the corpse or body parts of a believer. This fungibility of the human body can be also be interpreted as a violation of the objectification component of the body-orientated view, which prohibits the commodification of human bodily parts. Fungibility is a notion which is more apt under the bearing of human body as property, and bodily rights.

The objectification component of ḥurma holds great moral value, but not to the degree of the functional component, depending on degree of harm. Violating the objectification ḥurma is only permissible in the state of necessity (darūra)<sup>55</sup> for the Shafī‘ī jurists and some of the Malikī and Ḥanbalī jurists.<sup>56</sup> For most of the Ḥanafī jurists the objectification component of ḥurma holds relatively greater value, even in the state of necessity. This is evident in the situation of eating the flesh of the dead, where the Ḥanafī jurists consider it impermissible to eat the flesh (a body part) of the dead, even in situations where the omission of such an act threatens life. To consider a body part a consumable, a purpose which is contrary to its nature, violates its dignity- whilst in the case of human milk, also considered part of the body, its consumption for infants, or indeed adults<sup>57</sup>, is permitted with conditions. Similarly blood, also considered a body part, can be transfused in another in cases of necessity, because they both serve a purpose the nature for which they were created. Their dignity is therefore not violated, or at least, is tolerated.<sup>58</sup>

How the contemporary jurists identify this ḥurma of objectification related to the human body and how the principle of necessity fares in such considerations is considered the most challenging part of the debate on organ transplantation.

## Conclusion

The two primary sources of the sharī‘ah<sup>59</sup> do not provide detail on the issue of human organ use. For this reason, a lot of the contemporary literature by contemporary Muslim scholars relate human organ use to a number of traditional cases. These cases serve as a basis for analogical reasoning. The traditional cases describe actions vis-à-vis the human body and their rulings, as viewed by the classical Muslim jurists. They therefore provide some understanding of the

limits to the ḥurma of the human body in relation to other moral considerations. Muslim scholars and academics should articulate human dignity using these prime descriptions<sup>60</sup> of the violation of human bodily dignity, in context to these traditional cases. This will not just allow for a more nuanced approach to understanding the kinds of bodily dignity but also the limits to what degree such dignity can be compromised in cases of medical need and necessity such as in organ transplantation, cadaveric autopsy for research and teaching purposes, as well as use of human body tissue for other medical reasons such as stem cell research.

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52. Ibn ‘Ābidīn
53. Ibn ‘Ābidīn, *Hāshīā*, vol. 7, p. 245 (My translation)
54. al-Baihaqī, Aḥmad ibn al-Hussain (d. 364 A.H.), *al-Sunnan al-Kubrā*, (Hyderabād, Dār al-Ma’ārif al-Uthmānia, 1940) vol. 9, p. 133.
55. *Ḍarūrah*, in its technical sense, refers to a state of duress where one is compelled to act contrary to what Almighty God has prohibited in the primary Islamic sources to preserve what the sharī‘ah considers of greater importance. In other words, a lesser right of Almighty God is waived to one of greater priority. Ibn Nujaym, *Zain ud-Dīn bin Ibrāhīm* (d. 970 A.H.), *al-Āshbāh wa al-Nazāir ‘alā Madhhab Abī Ḥanīfah al-Nu‘mān*, (Beirut, Dār al-Kutub al-‘Ilmiyya, 1999), p. 73.
56. Contemporary Muslim scholars must cite the authentic works of recognised classical Muslim jurists of the past in support of their view and their ascribed school of legal jurisprudence. Majority of the Muslims in the UK ascribe to the sunni school of thought, and space does not permit me to refer to other schools other than the four most accepted sunni schools- namely, the Ḥanafī, Malikī, Shāfi‘ī and Ḥanbalī schools.
57. Jurists permit blood transfusion on the basis that human milk is also a body part and can be benefitted from by other individuals. See: Shafi‘, *Islam on grafting and transplanting*, pp. 36-40.
58. This would explain why it is permissible in the sharī‘ah for a woman to breast feed children other than her own. *Shaykh al-Nīẓām, al-Fatāwā al-Hindiyya*, vol. 4, p. 112; Ibn ‘Ābidīn, *Hāshīā*, vol. 7, p. 264; Jurists permit blood transfusion on the basis that human milk is also a body part and can be benefitted from by other individuals. See: Shafi‘, *Islam on grafting and transplanting*, pp. 36-40.

59. The Holy Qur'ān and the Sunna are considered the primary sources of the sharī'ah, where the sunna refers to the second level of legal proof after the Holy Qur'ān. See: Kamali, M. H., Principles of Islamic Jurisprudence, pp. 61.

60. Arguably, there are other prime descriptions related to the violation of human bodily dignity, such as bodily modesty ('awrah)- ensuring the private parts of the body are always covered, but these descriptions have not been considered in the debate on organ transplants because such violation can be easily overcome with due care and attention, and it does not hold direct relevance to the subject.