

Unstable Life: A Comprehensive Rebuttal Establishing the Legitimacy of Organ Retrieval in Brain Death Patients in Islamic Jurisprudence

Shaykh Dr Rifaqat Rashid

Academic Director Al Balagh Academy

Correspondence: drifaqat@albalaghacademy.com

Keywords: Islamic law, Brain death, unstable life, Organ donation, Islamic bioethics

Abstract

This paper provides a comprehensive response to recent critiques surrounding the ethical permissibility of procuring vital organs from patients declared clinically brain-dead within Islamic jurisprudence. The author not only summarizes but also expands upon an in-depth analysis to effectively counter objections raised by Hussain and other critics. While acknowledging that 'unstable life' (*al-ḥayāt ghayr al-mustaqirrah*) does not equate to absolute biological death, the paper adeptly illustrates its applicability in cases where patients exhibit profound, irreversible unconsciousness alongside catastrophic brain injury leading to imminent demise. A crucial distinction is drawn between unstable life and the established medical criteria for brain death, while also acknowledging considerable overlaps within certain clinical contexts. By meticulously explaining the two fundamental conditions delineated by classical Muslim jurists, the paper firmly establishes unstable life as a unique biological state closely aligned with the early stages of dying. The argument hinges on the pivotal role of diminished consciousness in definitively characterizing unstable life, thereby making it applicable to clinically brain-dead patients who remain in a permanent state of unconsciousness. Through a jurisprudential analysis, the paper systematically builds a multi-faceted case that upholds the ethical and legal validity of organ retrieval from clinically brain-dead patients with proper consent. In doing so, it effectively refutes allegations of unethical homicide (*qatl*) and constructs a compelling argument in favour of the lawful retrieval of vital organs from clinically brain-dead patients, grounded in the jurisprudential concept of unstable life.

Introduction

The paper discusses some salient points from a much longer paper by the author [1] related to the nuanced concept of brain death or neurological death in light of “unstable life” (*al-ḥayāt ghayr al-mustaqirrah*) as interpreted and formulated by classical Muslim jurists. This has recently faced criticism by Hussain (2022) [2] and others [3], who forcefully argue the prohibition of retrieving organs from clinically brain-dead patients in

Islamic jurisprudence. They add that reference to unstable life as a justification is not acceptable, as it merely represents a precautionary principle applied to homicide cases rather than a distinct biological state synonymous with the multifaceted process of dying. [3] This paper provides a concise overview of a comprehensive and multi-faceted counterargument to

such accusations and more, accomplishing this by clarifying the intricate prerequisites outlined by classical jurists that definitively establish unstable life as a unique biological state that is directly aligned with the intricate progression towards death. This establishment permits the application of rulings concerning the deceased, including the retrieval of organs for transplantation.

Of significant importance here is the ethical and legal perspective concerning the permissibility of medical interventions in and around death within the framework of Islamic *sharī‘ah* law. To grasp the legal or juridical standpoint of Islam, it is essential to consult classical Muslim jurists and legal scholars who provide principles and a conceptual structure derived from their authoritative interpretive method for Islamic sources. It is unnecessary to engage in metaphysical theological debates about the soul and its biomedical correlations. Instead, the focus should be on establishing a correlation between relevant Islamic jurisprudence on death by classical jurists and biomedical science.

Building upon this foundation, the paper will first address concerns that appear to blur the boundaries between language and semantics, encompassing physical, theological, and metaphysical events and processes associated with death. The choice of the terminology used by Hussain, particularly concerning 'biological death,' becomes entangled with the concept of 'social acceptance of death,' leading to a fusion of physical occurrences such as irreversible brain function loss (brain death) with metaphysical occurrences like the departure of the soul, indicative of 'religious death.'

Secondly, the paper will comprehensively expound upon the two essential conditions defined by jurists for unstable life, coupled with pertinent medical concepts. These conditions closely align unstable life with the intricate 'process of death,' albeit not precisely aligning with formal brain death criteria; instead, it represents a preceding stage. This alignment facilitates jurists' rational application of specific death-related judgments.

Furthermore, the paper will emphasize the derivation of unstable life in Islamic law rooted in revelations, supported by ample evidence. This underscores the necessity for a robust counter to opposing assertions that claim it to be a later construct confined to homicide or disconnected from contemporary realities.

Additionally, the paper will highlight the significance of permanently profound diminishment of consciousness as

the pivotal factor in equating unstable life with proximity to actual death, thereby enabling the application of specific death-related rulings.

Lastly, the paper will analyse the relationship between unstable life, brain death criteria, and bioethical considerations for organ retrieval from the juridical standpoint. Any essential surgical intervention to retrieve organs from consenting individuals aims to preserve lives rather than constitute illicit unethical killing.

In conclusion, the paper aims to systematically present a scholarly response of authoritative stature to address prevalent misconceptions surrounding unstable life in classical Islamic law.

Language and Semantic Distinctions Associated with Death

Hussain contends, "As the definition of death has evolved over time this may indicate that death cannot be accurately defined, only stable definition may be "irreversible cessation of life." Which would imply any signs of life precludes the diagnosis of death"." [2]

The inquiry emerges: to which nuanced comprehension of death and life is Hussain alluding, one that allows for a distinct demarcation between the two? Is this pertaining to biological death, or is there a conflation with a socially accepted interpretation of death?

He goes on to acknowledge, that "whether or not the soul has departed from an individual declared brain dead is impossible to ascertain with certainty. The only statement anyone can make for certain on this issue is that no one knows for sure", only to add that, "the traditional method used to determine this endpoint was the irreversible loss of heartbeat and breathing. These diagnostic criteria are still accepted by contemporary religious scholars as reliable signs of departure of the soul from the body (religious death)." [2]

Further to this he asserts, "labelling them "legally" dead does not change the reality. Legal death is not synonymous with actual death"." [2]

These various intricate interpretations of death are erroneously merged into a singular concept. It is imperative to discern between 'biological death' or 'death proper', 'religious death', and 'legal death' when viewed from secular, scientific, and Islamic standpoints. Hussain, in his analysis, lacks proper differentiation, especially concerning the Islamic comprehension of legal death (*al-*

mawt al-hukmī) in comparison to death proper (*al-mawt al-ḥaqīqī*). [1]

From a secular and scientific perspective, ‘biological death’ represents a transitional process, a fact, and is an inherent value-neutral change in an individual's biology. Inherently, it holds no moral significance as the reality is that it is unrelated to secular or theological viewpoints. Biological death can either be the final biological event or a significant change already occurring as part of the dying process. However, the social interpretation of biological death as an event is far from neutral. Socially, it can be understood as a dying biological state, death proper, religious death, or legal death, all of which carry moral implications and are therefore significant in terms of the perspective from which they are viewed.

Death proper is ‘socially’, universally accepted as referring to the point at which irreversible loss of cardio-respiratory function occurs, and there is no chance of revival or recovery. It signifies the permanent and final cessation of all vital functions necessary for sustaining life. Once death proper has occurred, there is no possibility of resuscitation or reversal. It represents the end of biological life and the process of decomposition.

Regardless of the perspective, one certainty is that death is a biological fact representing the inevitable impermanence of human life. In the impartial scientific language of biological changes, death may be temporarily reversible in some instances but ultimately remains unavoidable. This temporal reversibility should be differentiated from efforts to establish clear legal standards or definitions of death, where standard definitions strive to simplify biological death by marking it as the definitive end of an individual's life and narrative to serve a particular purpose.

For instance, a standard definition of a person's death may involve the individual sustaining either (1) irreversible cessation of circulatory and respiratory functions or (2) irreversible cessation of all functions of the entire brain. The first part serves a broader purpose in legal, cultural, and societal matters, requiring societal acceptance to implement all ethico-legal death-related behaviours including burial, culminating in a death declaration signifying a state synonymous with death proper. In contrast, the latter part is more reserved, allowing for the possibility of medical intervention in some procedures that may typically be ethically unacceptable if the person were alive. This state does not represent death proper, but rather moral or legal death

though may be designated the broader understanding of death proper dependent on social acceptance.

Biological death, therefore, entails understanding the intrinsic or real changes to the material essence of existence, while social death involves comprehending the narrative shift in our identity, hereafter referred to as death proper when a person is ready to be buried. Legal precedents anticipate the social death of a person before their physical biological life has truly ended, at which point some, but not necessarily all death behaviours are enacted; this is referred to as legal death and is not to be confused with death proper as has been by Hussain. Confusion arises when the three concepts of death—biological, death proper, and legal death—are mistakenly regarded as one. Each concept serves its own purpose.

Hussain extensively discusses the history of the neurological death standard and how death determined through the brain death standard is not identical to actual death, which he conflates with religious death as he perceives it.

He employs a strictly medical or scientific construct of death to make a case against organ retrieval from brain-dead donors while presenting it from an Islamic standpoint. However, the Islamic legal tradition extensively discusses the ethical acceptability of actions involving the human body in individuals nearing death with significantly reduced consciousness. This is the context where these inquiries should be addressed, rather than solely from a medical perspective.

Classical Muslim jurists describe a death process that exists as a liminal state between stable life (*ḥayāt al-mustaqirrah*) and death. This biological state is referred to as *‘aysh al-madhūh* (life of a sacrificed animal) or *ḥayāt ghayr al-mustaqirrah* (unstable life), which creates confusion due to its similarities and differences with both life and death proper. [1]

This state must be distinguished from life-related rulings, even though its biological characteristics closely resemble those of life, and it must also be differentiated from the biological state of death proper, even though its rulings are akin to those pertaining to death proper. This subtle biological and ethico-legal overlap can cause confusion, making the transition from life to death appear seamless or as a singular physical event rather than a process. This transition carries significant implications for the legality of medical interventions. This in-between state is tantamount to legal death or *al-mawt al-hukmī*,

which is quite different to death proper, and is based on the premise that its rulings closely resemble those associated with death. [4]

The paper intends to propose that the intermediary condition recognized by classical Muslim scholars as 'unstable life,' situated between life and death, aligns with the concept of the "death process." This state, characterized as a separate biological condition defined by revelation, is considered in various rulings to be akin to death in its normative aspects, thus leading to analogous legal decisions and behaviours related to death. The argument will demonstrate that this state of unstable life holds significance as a form of Islamic legal death, separate from the notion of death proper or the secular understanding of legal death. This distinction is derived from what is permissible within this state, while its determination is rooted in biological processes.

Conditions for Unstable Life

Classical Muslim jurists had precisely outlined two essential conditions for the state of unstable life: (1) unequivocal certainty of impending death, within a day, due to a catastrophically severe injury causing overwhelming trauma, and (2) definite somatic signs indicating universal loss of higher integrated cognitive processing and purposeful voluntary motor activity.

The first vital sign mandates that the exact nature of the injury or trauma must be clearly devastating enough to lead to death directly and shortly. An evaluation of the precise nature and medical severity of the incurred bodily injury or trauma allows learned jurists to prognosticate with reasonable certainty the direct linear trajectory towards death and dying. For instance, directly slitting the throat, crushing damage to the cervical spine, or profound penetrating abdominal trauma leading to the expulsion of internal organs are regarded as unequivocally and acutely fatal. Moreover, the imminent rapidity of predicted death following the catastrophic injury indicates its singular role as the proximate causative factor of inevitable demise. [5] [6]

The second cardinal condition entails the observable presence of decisive somatic signs that confirm objectively the overt loss of integrated neurological functioning and purposeful voluntary motor activity. Specific indicators delineated by jurists such as absolute loss of intelligible coherent speech, vision and hearing represent the irreversible onset of deep unconsciousness. Similarly, the permanent loss of spontaneous wilful movement and instead only purposeless reflexive or agonal movements are regarded as corroborative proof

that higher neurological function has been catastrophically compromised. This understanding aligns closely with the modern biomedical concepts of profoundly diminished central nervous system functionality secondary to incurable structural damage at multiple levels.[6] [7] [8] [9] [10]

Therefore, unstable life positively indicates the initiation of the irrevocable process of dying where brain functioning is critically and irreversibly impaired immediately following devastating trauma, though not necessarily amounting precisely to formal medical criteria for brain death determination, rather, a state even prior to it. The enduring vegetative unconscious state accompanied by appropriate confirmatory somatic signs signifies the decisive commencement of the complex process of death or unstable life, thereby allowing jurists to apply certain death-related rulings with reasonable certainty. [3]

Table 1. Conditions of Unstable Life

Conditions of Unstable Life		
1	Certainty of death	Nature of injury is certain to cause death
		Death is certain to occur within a day
2	Somatic signs	Permanent severely diminished or absent cognition and volition
		Permanent severely diminished or absent voluntary capacity for physical functioning

Application of Unstable Life to the Sick Patient

The concept of "unstable life" in classical Islamic jurisprudence is explored in relation to sick patients. Classical jurists assert that somatic signs resembling unstable life due to illness do not qualify for legal death rulings. [1] If someone is sick, exhibiting such signs, and is subsequently assaulted and dies, the assailant is considered the murderer and faces punishment. The distinction lies in the certainty of death between direct assault and illness-related death. Direct assault results in clear evidence of imminent death, while illness-related death is less certain. [4] [6] [8] [11]

During medieval times, distinguishing between illness-induced unconsciousness leading directly to death and assault-induced death while unconscious was challenging. Physical signs resembling unstable life did not fulfil criteria for rulings related to unstable life or the death process. Severe injuries clearly predicting

imminent death differ from unconsciousness due to illness, which lacks certain indications of impending death.

Some jurists consider a poisoned person analogous to a severely assaulted person, attributing unstable life to them if they show signs. This is due to the clear trajectory toward death caused by poisoning, similar to severe injuries. Advances in imaging and diagnostics now allow accurate determination of brain injury severity and subsequent death certainty. If certain through diagnostics that a person will die within a day due to trauma and underlying illness, accompanied by signs of unstable life, it can be classified as a death process. [7] [13] [14]

Somatic signs described by classical jurists relate to loss of physical and cognitive abilities. These states can apply to patients in a persistent vegetative state (PVS) or minimally conscious state (MCS) if the injury cause is clearly identified through diagnostics and death is certain without artificial support. However, distinctions exist between PVS and MCS, where MCS patients may still show minor signs of stable life and not be considered in an unstable life state.

Hussain contends that consciousness is not an all-or-nothing state and lacks a universally accepted definition. Adopting the higher-brain standard would categorize individuals in a persistent vegetative state (PVS) as deceased, despite their ability to breathe spontaneously and retain brainstem functions. Some individuals can remain in this state for extended periods, including years. Similarly, infants born with anencephaly, lacking consciousness but capable of independent breathing, would also meet this criterion for death. The general public would likely find procedures like dissection, post-mortem examinations, or burials unacceptable for unconscious individuals who can still breathe independently. Additionally, Hussain challenges the concept of unstable life in patients on life-sustaining treatment (LST), arguing that patients with ongoing vital functions should be considered alive. Such patients might even grow and develop while brain-dead, and their organs may not experience necrosis or heart failure within days. Thus, this state should not be considered the process of death or unstable life. [2]

The point of contention here stems from the conflation of unstable life with true death. While it's acknowledged that individuals removed from life support who can breathe independently, even those in a PVS, might

continue to show signs of life, it's crucial to distinguish this scenario from the unstable life concept. Unstable life, as defined, refers to a state where the person's self-sustaining life is absent after an injury, potentially leading to compromised or lost spontaneous breathing, ultimately resulting in death within a day without artificial life support. This definition encapsulates not just the capacity for spontaneous breathing, but also the trajectory of impending death within a short timeframe. [15]

Regarding patients on life-sustaining treatment (LST), the notion that ongoing vital functions imply life in a stable state is indeed relevant. However, the crucial factor is the predictability of survival. In cases where patients with ongoing vital functions are expected to face imminent death shortly after the withdrawal of LST, this aligns with the concept of unstable life. The intent behind such considerations is to accurately determine a point where death is inevitable, rather than merely delaying the process of death.

Hussain clarifies that there are instances where patients suffer a lasting loss of their ability to breathe due to a severe cervical cord lesion. In these cases, individuals remain awake and mentally aware but rely on a ventilator to sustain their life. The situation of Christopher Reeve, who experienced paralysis from a C1-2 injury, exemplifies this scenario. Additionally, there are rare occurrences of Total Locke Syndrome, wherein patients are conscious and alert yet lack integrated functioning beyond that seen in a brain-dead patient. Such patients necessitate intensive care similar to brain-dead individuals to maintain their vital functions. [2]

Addressing this dilemma is relatively straightforward. The conditions mentioned do not align with the concept of unstable life. Unstable life involves a permanent loss of cognition, voluntary physical activity, and volition. Therefore, if an individual retains cognition, awareness, and wakefulness, their state cannot be categorized as unstable life.

In the case of Total Locke Syndrome, even though externally they exhibit signs similar to unstable life, their consciousness remains intact. Their paralysis impedes them from acting on their intentions, which results in a loss of voluntary physical actions while their cognition remains mostly undamaged. It's important to note that their condition is attributed not to brain injury but rather to brainstem injury, indicating that they aren't in the process of dying. Due to the presence of uncertainty and

out of caution, classical Muslim jurists refrained from categorizing patients with underlying illnesses in this state as being in unstable life.

For a state to be classified as the death process, diagnostic evaluations must confirm severe brain damage as the cause and ascertain that death will occur within a day. Irrespective of brain electrical activity, the presence or absence of voluntary functional activity, cognition, and volition hold paramount importance. These factors decisively determine whether the state is characterized as stable life or unstable life.

Revelation-Based Legal Theory

The intricate theory of unstable life has its origins in revealed Islamic teachings and the authoritative scholarly consensus of the Prophet Muhammad(ﷺ)'s companions and eminent early Muslim jurists. The special significance given to a newborn's loud lusty cry (*istahall*) at birth is derived directly from an authenticated Prophetic statement specifying: "If a newborn cries audibly [at birth], it inherits" (Ibn Mājah). The conspicuous absence of this cardinal evidentiary sign of stable independent life compels the application of unstable life rulings instead. This is because a newborn exhibiting only reflexive breathing movements without a spontaneous forceful cry was considered legally equivalent to being dead, for matters related to inheritance rights and other shari'ah rulings as this was seen as a state synonymous with unstable life. [5] [16] [17] [18] [19]

Moreover, there was scholarly consensus between classical jurists and Prophetic companions concerning the legitimacy of the concept of unstable life, based on authentic scriptural sources and the authoritative acceptance of companions regarding the fatal abdominal injury and subsequent death process of the eminent Caliph Umar ibn al-Khattab. The companions of the Prophet (ﷺ), acknowledged the death of the companion and Caliph, Umar, based on the announcement of his death by the attending physician based on the severity of his injury, and his overall condition before actual death. [5] [15] [16] [20] This permitted the companions to initiate death-related practices such as fulfilling his bequests and making decisions regarding the next caliph. Therefore, unstable life is not an arbitrary cautious precaution but a bonafide revelation-based biological state with origins in primary revealed texts and juristic exegesis, necessitating a robust response to opposing claims of it being a later construct specific to homicide.

Hussain underscores the necessity for the legal judgments of classical Muslim scholars to synchronize with present realities. To illustrate, he highlights their past endorsement of a gestation period of 2-7 years, which contemporary scientific insights no longer substantiate. [2]

Classical scholars founded their principles on revelation, an aspect widely accepted. Nonetheless, the application of these principles can evolve alongside biomedical progress. Current knowledge confirms the observable maximum gestation period through imaging, rendering the speculative 2-7-year range irrelevant. This range's basis lies in application, not the core principle. It was shaped by medieval medical understanding and expert input, influenced by probability rather than certainty. This distinction highlights how principles were employed within the context of less advanced medical awareness in their era.

The same principle extends to the adjustment of past scholars' legal decisions by contemporary scholars, particularly concerning matters like fast invalidation due to medical interventions, rooted in human anatomy understanding. Classical scholars devised fundamental principles for invalidating fasts, which they applied according to the prevailing comprehension of human anatomy. They expressly acknowledged that these judgments hinged on the biomedical knowledge accessible in their era.[21] [22]

Conversely, the concept of unstable life aligns harmoniously with modern biomedical understanding, endorsing the proposals of classical scholars. Their criteria centred on diminished neurological signs seamlessly integrating with current knowledge and are even refined by it. Similarly, contemporary scholars adapt past rulings based on the progressing insights of medical science. The underlying principles originating from revelation remain valid, with their application tailored to the most recent medical advancements.

The relevance of how the US, Australia, and Europe regard individuals declared dead according to brainstem criteria is inconsequential in the context of an Islamic viewpoint. The Islamic perspective necessitates an exploration of the matter through the lens of unstable life's transitional states between existence and death, along with how contemporary medical comprehension interfaces with and enhances this perspective. [2]

The notion of the death process within the realm of unstable life isn't contingent upon scientific knowledge or discoveries, but rather hinges on two fundamental

conditions: the certainty of death and somatic indicators of unstable life derived from sacred sources. It's pertinent to recognize that existing neurological standards for

establishing death, whether predicated on whole-brain or brainstem criteria, harmonize with this interpretation, signifying the concept of unstable life. Ultimately, it's the alignment with this understanding that holds significance.

In his fatwa, Butt elaborates that the Sunni Islamic schools propose a 2-3 day delay in declaring death when uncertainty is present, a practice that extends to cases of unstable life. This approach is founded on the principle of confirming death for burial purposes, ensuring accurate identification. [2] [23]

The concept of putrefaction isn't aimed at pinpointing the exact time of death; it pertains to determining the timing of burial. Jurists engaged in discussions on this matter primarily concerning obscured deaths such as sudden fatalities from various causes like battles falls, or animal attacks. Their recommendations centred on waiting for unmistakable signs of death in such situations. Ibn Qudāma suggested a period of 3 days, while al-Başrī, al-Nawawī, and Ibn al-Rushd differed in their stances based on factors like doubt or specific causes like drowning. [18][24][25][26]

Advanced medical technology has mitigated concerns about premature burial. Delaying burial solely based on this apprehension appears unwarranted. The classical accounts aimed at confirming suitable conditions for burial, not the determination of the death process or unstable life.

These historical accounts offer clarity regarding the timing of burials as outlined in Islamic jurisprudence. It's vital to differentiate between death proper and legal death. While they do share certain death-related rulings, they diverge in context and shouldn't be conflated.

Profound Diminishment of Consciousness

The extreme depth of diminished consciousness is the single most important defining hallmark of the unstable life state, which distinguishes it from formal medical criteria required for the diagnosis of brain death.

Individuals who meet the complex clinical and technological criteria for brain death no longer possess any consciousness or voluntary function. However, some residual brain stem activity driving basic reflexes may

still be present. On the other hand, unstable life indicates that consciousness, cognitive awareness, understanding, and purposeful behaviour are completely lost, confirming permanent profound unconsciousness. However, some basic brain stem reflexes allowing dysfunctional organ function may remain for a short period. Hence, loss of higher mental functions and consciousness are key for determining both brain death and unstable life. Brain-dead patients who lose all consciousness but retain reflexive activity satisfy the prerequisites of unconsciousness stipulated for unstable life. Therefore, organ donation is permissible in unconscious brain-dead patients under unstable life conditions before total brain function cessation.

Patients in very low-awareness neurological states such as persistent vegetative or minimally conscious conditions exhibit substantial impairment of higher cognitive abilities and purposeful volition. Although incapable of independent living, their neurological status does not necessarily match the strict thresholds set for clinical brain death determination.

Nonetheless, classical Muslim jurists considered the overt and enduring profound unconsciousness seen in unstable life as reasonable grounds for applying certain death-related rulings due to its close proximity to actual death if death was to ensue shortly after.

The unequivocal loss of higher integrated cognition and wilful purposeful volition, not just primitive brainstem reflexes alone, is the most crucial factor in definitively determining the state of unstable life. This singular state of severely diminished consciousness carries enormous consequences for complex deliberations regarding controversial end-of-life decisions within the framework of Islamic law such as withdrawing life-sustaining treatments.

It has been asserted that in 1985, the Islamic Organisation for Medical Sciences (IOMS) linked brain death with unstable life, permitting the withdrawal of life support. Hussain, however, contends that IOMS didn't explicitly designate this as legal death. Nonetheless, its endorsement of discontinuing life support for unstable life implies an acknowledgement of its ethical and legal differentiation from stable life. [2]

The confusion arises from conflating the Islamic concept of "al-mawt al-ḥukmī," which signifies legal death, with the Western medical interpretation of death that held more significance for IOMS. Western legal death aligns with biological death when resuscitation is unfeasible or

ethically unjustifiable. In contrast, Islamic legal death is concerned with implementing death-related regulations within the parameters of unstable life's criteria.

"Unstable life" denotes a state of biological instability that approaches death due to preceding events in the process of dying. During this phase, the death process unfolds concurrently with the application of death-related rulings established by classical scholars. While the departure of the soul is not explicitly addressed, the loss of rational control over the body legitimizes the application of death rulings, even if the soul has not yet departed. [10] [27]

It is crucial to understand that the IOMS's scope was not to explore the permissibility of organ transplantation within the context of unstable life. Instead, their focus was on ascertaining whether brain death aligned with death proper. This distinction highlights the varied objectives of IOMS and the discussion around unstable life within the Islamic framework.

In conclusion, equating unstable life and legal death within the Islamic paradigm remains distinct from Western interpretations of biological or legal death. To avoid confusion, it is essential to differentiate between these concepts and recognize their individual contexts.

Relationship to Brain Death Criteria and Organ Retrieval

From the perspective of Islamic jurisprudential principles, patients exhibiting both medical certainty of rapidly ensuing death due to catastrophic injury as well as the somatic signs of permanent deep unconsciousness associated with unstable life can be reasonably considered as legally dead, though not biologically deceased. Hence, any necessary surgical intervention to retrieve organs from such individuals done with appropriate consent solely aims to save lives and does not constitute unlawful unethical killing (*qatl al-'amd*). This is because their organs are of no conceivable benefit to them in the state of unstable life as their consciousness is permanently and irreversibly lost. Thus, retrieving their organs for transplantation represents a legitimate act of necessity (*darūrah*) permitted by Islamic law to uphold the sanctity of life.

Some of the most common arguments against organ retrieval in such patients, put forward by Hussain tend to relate to the following three concerns. That (1) vital

organs can only be retrieved from the dead and this is not death, but hastening death, that (2) the patient may be alive and sense the pain of removal of their vital organs and that (3) diagnostic tests to determine that the patient is dead are not certain enough. [2]

Vital organs from such patients cannot be retrieved in cases of necessity until there is certainty that the patient is dead. The removal of vital organs before this is hastening death and akin to killing.

The position posited in this paper suggests that organ retrieval from individuals in an unstable life state is permissible with appropriate safeguards. The concept of death is presented as a process, and the criteria for determining proper death are elucidated in terms of the "permanent" cessation of vital functions.

The ongoing discourse between "irreversible" and "permanent" is explored in the more detailed paper, with emphasis placed on the logical validity of permanence as a standard. The notion of permanence is subsequently linked to Islamic principles, as the pivotal consideration pertains to the initiation of the death process (unstable life), rather than exclusively irreversible cessation. Justifying the adoption of the permanence standard for death determination within Islam is warranted.[1]

Drawing an analogy, organ retrieval from individuals in unstable life is likened to the act of discontinuing life-supporting apparatuses, as the organs retain limited value in this context. The principle of necessity is invoked, permitting organ retrieval in these circumstances. Additionally, a comparison is drawn to legal consequences for assault in Islamic jurisprudence, underscoring the differentiation between scenarios involving stable life and those involving unstable life. [1]

In essence, the discourse advances the perspective that organ retrieval from those in an unstable life state adheres to Islamic principles when examined through the lens of permanence, necessity, and comparisons with established legal precedents within the Islamic legal framework.

Retrieving organs from such patients may potentially harm the patient and in Islam, no act of necessity is permissible if it involves harming or taking the life of one for the benefit of another.

The argument posits that physical harm could result only if there exists retained brain function within the patient,

allowing for the perception of pain, or if the act accelerates the demise of a living individual.

The implementation of safeguards during organ retrieval procedures effectively precludes any possibility of reversing brain function. Organs are extracted following the discontinuation of life-sustaining treatment, adhering to specific timeframes where circulatory and respiratory functions cease. The declaration of death is carried out post the designated "no-touch period," adhering to the criteria of unstable life or proper death. Current practices align seamlessly with the Islamic principle of necessity, as they seek to benefit others through organ transplantation, provided there is consent, thus advancing higher Islamic interests.

In essence, the contention asserts that the apprehension surrounding potential harm during organ retrieval is addressed by the existence of safeguards, adherence to established timeframes, and alignment with principles of necessity and consent in Islam. [1]

There have been cases where certain patients have had their neurological functioning reversed and hence there is uncertainty in the accuracy of the diagnostics related to the neurological death standard.

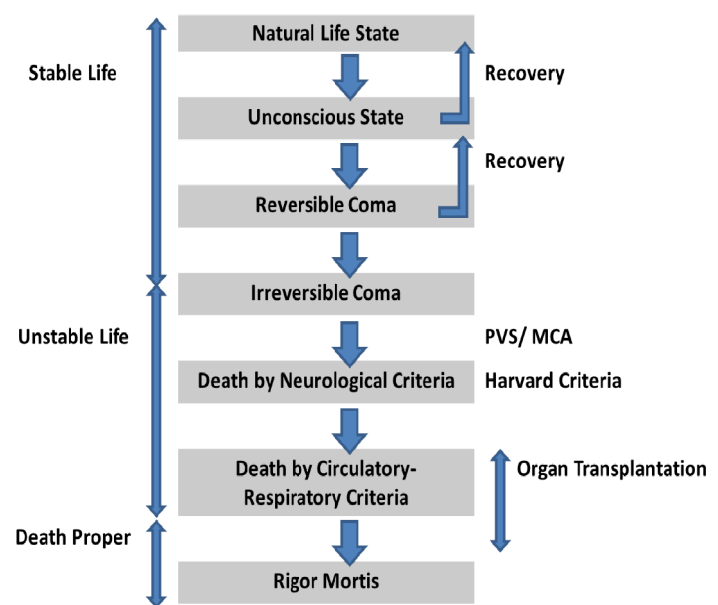
The argument contends that the gold standard for ascertaining death based on neurological criteria involves a clinical neurologic assessment. From the standpoint of the Islamic perspective, the assurance offered by these diagnostics is substantial. The indispensable requirement for permanent brain function loss holds a unanimous consensus within the field. While the matter of consciousness holds significance, it's noteworthy that there are no documented cases that contradict the established criteria.

In the context of ancillary testing, its utility emerges in specific situations. Islamic law embraces a sense of approximation rather than absolute certainty when establishing death. Legal certainty corresponds to a high dominant probability, denoted as "*ghalabat al-zann*." The determination of death can be made post cardio-respiratory collapse or the confirmed cessation of brain stem function.

Moreover, the verification of brain stem death renders the need for confirming the absence of brain circulation redundant. The response underscores that the clinical approach towards determining death by neurological criteria is robustly grounded, with emphasis placed on the

permanent loss of brain function and the significant role of ancillary testing in certain scenarios. [1]

The visual depiction in the table underneath illustrates the Islamic notions of stable life, unstable life, and death proper, juxtaposed with contemporary terms and interventions, along with their permissibility.



Conclusion

This paper is a summary of the more extensive paper which offers a multifaceted yet authoritative point-by-point rebuttal to the major recent criticisms related to the concept of unstable life in traditional Islamic jurisprudence being a justification to permit retrieval of vital organs in the brain dead. It has comprehensively demonstrated that unstable life represents a distinct revelation-based biological state that is positively identified with the early stages of the irreversible dying process, distinguishable through explicit somatic signs and absolute certainty of impending demise. The paper also underscored the paramount role of profoundly diminished higher consciousness as the single most important factor in conclusively determining the state of unstable life, with significant implications for complex end-of-life decision-making. While noteworthy associations exist between unstable life states and formal

criteria for brain death, establishing their full jurisprudential equivalence requires additional painstaking analysis by modern scholars. Overall, this

paper aimed to present a broad-based yet cogent scholarly repudiation to systematically address salient misconceptions associated with the multifaceted state of unstable life and its key determinants in Islamic law.

References

- [1] Rashid, R. (2023). *Unstable life: The Death process in Classical Islamic Jurisprudence and its Implications for End-of-Life Decisions*. Available <https://independent.academia.edu/RafaqatRashid>
- [2] Hussain, A. (2022). Is the 'Concept' of Brain Death Compatible with the 'Reality' of Religious Death? *Journal of the British Islamic Medical Association*, 10(4), 12-29.
- [3] 'Anqāwī, T. (2018). *Aḥkām Qarārāt al-'Ilājāt al-Musanidāt'il-Ḥayāt*. Dar Atlas al-Khadra', al-Riyad.
- [4] IOMS (The Islamic Organization of Medical Sciences). (1986). Nadwat al-ḥayāh al-insāniyyah bidāyatu ḥawāniḥāya tuḥāfī al-mafhūm al-islāmī al-munaqīdah. *Majallat Majma' al-Fiqh al-Islāmī*, 1986(3), 239. Kuwait.
- [5] al-Buhūṭī, Maṣṣūr b. Yūnus. (2003). *Kashshāf al-Qinā' 'anMatn al-Iqnā'*. Dar Alam al-Kutub, al-Riyad, 5(516).
- [6] Al-Haythamī. (2020). *Tuḥfat al-Muḥtājfi Sharḥ al-Minhāj*, al-Kuwayt : Dār al-Ḍiyā'lil-Nashrwa-al-Tawzī', 8(393).
- [7] al-Jamal, Sulaymān. (n.d.) *Hāshiyah al-Jamal 'alāSharḥ al-Minhāj*, Beirut: DārIḥyā' al-Turāth al-'Arabī,5(16).
- [8] Al-Anṣārī. (n.d.). *Asnā al-Maṭālib fī Sharḥ Rawḍ al-Ṭālib*, Dār al-Kitāb al-Islāmī, 4(10).
- [9] Al-Ḥadādī. (2006). *al-Jawhurat al-Nayirah 'alā Mukhtaṣār al-Quḍūrī*, Beirut: Dār al-kutub al-'Ilmiyyah, 1(110).
- [10] Ibn 'Ābidīn. (2000). *Hāshiyah Ibn 'Ābidīn*, Beirut: Dār al-Fikr, 2(227).
- [11] Al-Ramlī. (2003) *Nihāyat al-Muḥtājwa Hāshiyat al-Shibrāmalsī*, Beirut: Dār al-kutub al-'Ilmiyyah,8(15).
- [12] al-Shirbīnī (1997),*Mughnī al-Muḥtājilā Ma'rifa Ma'ānī Alfāz al-Minhāj* (Muḥammad Khalīl'Aytānī ed, Beirut: Dār al-Ma'rifa. 5(227).
- [13] al-Qalyūbī, and 'Umayra (1956). *Hāshiyatā Qalyūbīwa 'Umayrah*, Cairo: Muṣṭafā al-Babī al-Ḥalabī, 4(105)
- [14] Al-Zuhaylī. (1997). *al-Fiqh al-Islāmīwa Adillatuh*, Damascus: Dār al-Fikr,4(2785).
- [15] Al-Zarkashī. (2000). *Al-Manthūr f'īl-Qawā'id*, Beirut: Dār al-Kutubal'Ilmiyyah, 2(406).
- [16] Al-Mawsū'at al-Fiqhiyya. (1982)Wizārat al-Awqāf wa al-Shaūn al-Islāmiyyah, Kuwait,. 18(269).
- [17] Al-Zurqānī. (2002). *Sharḥ Zurqānī'alaMukhtaṣaral-Khalīl*, Beirut: Dār al-kutub al-'Ilmiyyah2(112).
- [18] Ibn al-Qudāmah. (n.d.). *al-Mughnī Sharḥ Mukhtaṣar al-Khirqī*, ('Abdallah b. 'Abd al-Muḥsin al-Turkī and 'Abd al-Fatāḥ Muḥammad al-Ḥalw eds, Riyadh: Dār'Ālim al-Kutub6(384).
- [19] Al-Mardāwī. (1956). *al-Inṣāffī Ma'rifat al-Rājiḥ min al-Khilāf*, DārIḥyā' al-'Arabī7(331).
- [20] al-Jaṣṣāṣ. (2010). *Sharḥ Muḥtaṣār al-Ṭahāwī*, Dār al-Bashā'ir al-Islāmiyyah, 5(134).
- [21] Ibn Nujaym. (1997). *Al-Baḥr al-Rā'iqSharḥ Kanz al-Daqā'iq*, Zakariyyā'Umayrāt ed, Beirut: Dār al-Kutub al-'Ilmiyyah,2(278).
- [22] Al-Marghinānī. (2010). *al-Ḥidāyah*, Beirut, Dār al-Iḥyā al-Turāth, 2(268).
- [23] Butt, Z. (Date not provided). Organ Donation and Transplantation in Islam - An Opinion. An Islamic perspective on organ donation can be downloaded at <https://www.organdonation.nhs.uk/helping-you-to-decide/your-faith-and-beliefs/islam/> (accessed May 2020).
- [24] Qal'ah-Jī, Muḥammad. (2017). *Mawsū'atFiqh al-Ḥasan al-Basrī*, Dār al-Nafā's, 1(852).
- [25] Al-Nawawī. (2008). *al-Majmū' Sharḥ al-Muhadhdhab*, Maktabat al-Irshād, 5(110).

[26] Ibn Rushd. (2007). *Bidāyat al-Mujtahid wa Niḥāyat al-Muqtaṣid*, (Abū Aws Yūsuf b. Aḥmad al-Bakrī ed), Amman: Bayt al-Afkār al-Dawliyya,1(164).

[27] al-Shaykh Niẓām and a group of Indian scholars (2010)., *al-Fatāwā al-Hindiyya: Fī Madhhab al-Imām al-Aḥmad Abī Hanīfa al-Nuḥmān*, Beirut: Dār al-Kutub al-ʿIlmiyyah, 6(6).