Chapter 3.4.7: Legal Aspects of Organ Donation

Learning Objectives as per Saudi Laws
1. Significance of organ transplantation and the Islamic perspective on this issue.
2. Definition of organ transplantation and why it is important.
3. Ethical issues related to global organ transplantation.
4. Existing guidelines, possible practical solutions, and conclusions of organ transplantation and organ trafficking.

In the modern world, there have been many medical developments to improve the quality of life. One of the most significant improvements in healthcare has been the advent of organ transplantation. Organ transplantation is both a life extending and a life-saving medical procedure in which a whole or partial organ (or cells in cell therapy) from a deceased or living person is transplanted into another individual, replacing the recipient’s non-functioning organ with the donor’s functioning organ or tissue (e.g., cornea).

Organ transplants have resulted in a significant reduction in mortality of patient populations in need of new functional organs. Hundreds of thousands of patients have benefited from this technology over the last four decades.

Organs are harvested by two means: One is to obtain organs from brain-dead or human cadavers. The others are harvested from a living donor, who may or may not be related to the recipient. The majority of cadaveric organs are obtained by previous consent from the donor or the family. In most living donor organ transplants, the organ is donated voluntarily. Since the 1980s, advances in the science of organ transplantation have significantly broadened the range of transplantable organs and improved transplant outcomes.

Transplant centers in different parts of the world successfully transplant kidneys, liver, lungs, hearts, pancreas, and intestinal organs, and the procedure is considered the preferred treatment for several indications. Since the first kidney transplant in 1954, the increasing success of, and innovations in, transplants have created a demand for organs that greatly exceeds the supply in most countries.

A major development is the procurement of organs from family members, and most recently from friends and even strangers. We are also witnessing desperate patients
soliciting organs on the Internet (Wright & Campbell, 2006), the compensation of living donors for related expenses, or even the bestowing of financial rewards for donation, and the experimental use of organs from animals. These recent trends are at the forefront of current ethical debate on transplantation, and they are gaining varying levels of acceptance in different countries by both the public and the transplant community. The sale of organs is another highly complex subject that has received much attention. Often, organs are obtained from people who are willing to sell their organs for financial compensation. Furthermore, due to the ever-increasing demand for new organs, and the finite supply, a lucrative black market of organ trafficking has been established. The United Nations Trafficking Protocol states: “Organ trafficking occurs where a third party recruits, transports, transfers, harbours or receives a person, using threats (or use) of force, coercion, abduction, fraud, deception, or abuse of authority or a position of vulnerability for the purpose of removing that person’s organ(s). Where children are concerned, the removal of an organ(s) facilitated by a third party constitutes trafficking with or without considerations of deception or coercion. Third parties may include brokers or others such as medical professionals or laboratories acting as brokers.”

The Islamic guidelines and Islamic law have described certain rules and regulations, which allow organ transplantation to be performed. The conditions that permit organ transplantation include

(1) The recipient of the organ will definitely be helped,
(2) The donor is not harmed, and
(3) The donation of the organ is done voluntarily without any financial compensation.

In accordance with these mandates, organ donation in return for money or any other form of compensation is strongly condemned in Islam, as it does not abide by the third rule mentioned above. Many international laws and rules have views similar to Islamic law and regulations.

Organ donation in Saudi Arabia has been on the rise, as awareness of this global phenomenon, which allows people to save lives, has increased. The achievements of the organ transplantation program in Saudi Arabia during the year 2011, as well as increasing numbers of end-stage organ failure, have also boosted people’s interest. During 2011, the organ failure census in Saudi Arabia showed more than 12,500 patients on kidney dialysis in 178 hospitals, and about 22.3% patients on the active waiting list, with another 20% under evaluation for inclusion. At the end of 2011, a total
of 8,820 possible deceased cases were reported to the Saudi Centre for Organ Transplantation, of which 710 were reported from 97 intensive care units around the Kingdom. In the last five years, an average of 615 cases per year were seen in the Kingdom.

This will help balance out the demand and supply of organs for many patients on the active waiting list. Renal transplantation has its own special value in Saudi Arabia. Shaheen has noted that “inside the Kingdom by the end of 2011, renal transplantation has been performed with a total of 4830 living donors and 2349 cadaveric organs” (Shaheen, 2012). This shows the medical advancement of kidney transplantation in Saudi Arabia.

This topic is very important because of the ethical and policy issues. It is also important because the black market in organ trafficking has been growing exponentially within the Middle East, as shown by a survey carried out on the specialty of organ transplantation within twenty-one countries of the region. More importantly, many of these countries do not administer fair and just policies in organ distribution, but rely heavily on third parties to gather organs.

Ethics

Organ transplantation presents several ethical challenges, including issues related to the determination of death, organ procurement, and organ allocation (Veatch, 2004). One of the questions debated is whether, after death, an individual's organs are a societal resource to be automatically recovered, or an individual's personal property, requiring his or her approval for organ recovery. The practice of obtaining consent for donation raises, for some people, ethical concerns about presuming another's wishes if the subject of donation had not been discussed with the deceased while he or she was alive. The scarcity of organs for transplantation necessitates the establishment of criteria on which to base allocation decisions, particularly for organs from deceased donors. The distribution formula commonly used draws mainly on two general ethical principles: utility and justice. Utility is calculated according to medical benefit and justice is assessed on the equity of distribution, requiring (on some accounts) that the sickest or worst off be given some priority, to ensure that all are afforded an equal chance to be healthy.

Many countries have enacted legislation against commerce in organs. Partly as a result of these legal prohibitions, the phenomenon of transplant tourism has emerged. In India, for example, the sale of organs is illegal, but the legislation established to prevent it has
proven ineffective. The laws in most countries require donor consent to posthumous organ donation.

Unlike payment for organs, the compensation for expenses incurred by 220 donation is considered completely justified. Other ethical issues include the consent form and its applications in this area; in addition, commercial transplantation is another important ethical issue.

Policy

Government agencies, transplant regulatory bodies, and health care institutions recommend and set policies that, in addition to legislation, guide transplant practice with respect to definitions of death, allocation decisions, and organ procurement. Despite the widely adopted legal definition of brain death, individual hospitals have varying practices used by physicians to certify death. It would be advisable to have uniformity on this issue. Organs from the deceased are commonly allocated according to policies established by regional, national, or international transplant organizations. In Canada, the Trillium Gift of Life Network and the British Columbia Transplant Society are among the largest regional organizations handling the collaborative development and implementation of policies governing organ distribution.

Policy management is undertaken in the USA by a national organization, the United Network for Organ Sharing, and in several European countries by an international organization, the Eurotransplant International Foundation. Generally, these transplant organizations use computer programs to allocate organs to recipients on a waiting list; recipients' registration on the list is based on acceptable criteria such as organ compatibility, medical need, wait time and geographical distance between the organ and the recipients (British Columbia Transplant Society, Eurotransplant International Foundation, Trillium Gift of Life Network, and the United Network for Organ Sharing).

Policies on living donation at most transplant centers support donations from relatives. Donations from friends and altruistic strangers are increasingly being accepted. Although policies allow donors to direct their organ to a known recipient, transplant centers that permit donations from altruistic strangers, in which the recipient is unknown, are reluctant to allow such donors to direct organs to a recipient of a specific social group. Instead, the recipient is selected according to the same waiting list criteria as for deceased donor organs.

The well-established position of transplantation societies against commerce in organs has not been effective in stopping the paid growth of such transplants around the world.
Individual countries need to study alternative, locally relevant, and ethical models to increase the number of transplants, protect and respect donors, and reduce the likelihood of rampant, unregulated commerce in organs. The Kingdom of Saudi Arabia has an active deceased transplant program under the supervision of the Saudi Centre for Organ Transplantation. The Saudi Centre for Organ Transplantation is an organization in the field of medical and social care. Its main goal is organ transplantation that follows the ethical and religious rulings that are salient in this region. Their mission is to alleviate suffering and improve patients' life expectancy “by providing variable organs to all end-stage organ failure patients whether from deceased or living donors.”

A number of countries in the Middle East have become the main hub of supply and demand of global organ trade and trafficking activities. One such case is Turkey, which has become a very important transplant host for North American and Israeli patient populations. They usually receive organs from Moldova, especially kidneys. On the other hand, the Southeast Asian subcontinent, the Middle East, and the Far East Asian countries have relied heavily on donors originally from Pakistan, India, and Indonesia.

Another aspect of organ trafficking is transplant tourism, which can be defined as follows: “Transplant tourism is an international phenomenon in which organ seekers, usually from wealthier nations, travel to developing countries where they receive organ transplants. Trips abroad are typically arranged by a third party, often a health care provider working in the destination country (...).” How should we approach organ transplantation in practice? In a situation in which a person’s death is expected but has not yet occurred, practice guidelines for cadaveric organs urge that declarations of death or the decision to withdraw life support be made by a physician who is not a member of the transplant team, and before approaching the family about donation. Usually, the family is given information about the option to donate, if known, and is asked to give consent to such donation. These tasks are often handled by regional organ procurement agencies, which, upon being notified of a potential donor by the transplant center, find a suitable recipient and coordinate the recovery and transportation of organs (United Network for Organ Sharing). Consensus statements and recommended ethical practice guidelines on living donation identify several practical elements as essential to ensuring the wellbeing of living donors. With respect to informed consent, a donor must be fully and accurately informed about, and demonstrate an understanding of, the risks and benefits of donation as it affects themselves and the recipient as well as the different surgical options available, during which the donor has an opportunity to reconsider his or
her decision. The transplant center must ensure that the donor’s decision to donate is voluntary and is not unduly influenced by material gain, coercion, or other factors that may reduce individual autonomy. It is recommended that, if possible, the donor and the recipient be assigned separate care teams or advocates to protect their individual interests. Assessments of medical suitability will depend on which organ is being donated, and will be carried out by the transplant team physicians. The donor’s psychosocial suitability must be evaluated to rule out psychological risk factors such as a severe mental disorder. It is also advisable to evaluate other factors, such as economic constraints or domestic issues. These evaluations help to determine whether the donor is mentally competent to give informed consent, and if his or her decision is voluntary. Altruistic stranger donation should follow the same guidelines as those established for donations from relatives, with an emphasis on the psychosocial assessment. In addition, the relationship between the donor and recipient, whether strangers or familial, should not affect the degree of acceptable risk to the donor.

References and Further Reading: