

## The Nature of the Human Corpse Transaction in the Direction of Medical Education

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**Abstract:** Medical education is of particular importance today. Advances in medical education increase the health index. Medical education is based on autopsy. Increasing the number of corpses for autopsy develops medical education. To this end, some people have donated their bodies after death. To this end, some people have donated their bodies after death. Trading human body after death is the solution that forensic medicine has proposed for eliminate the deficiency of the human body that medical universities need it for medical education. The fatwa of the jurists has proved the correctness of this action, however, there is an important question in this regard what is the nature of the human body trading? Differences in the nature of tradings, pillars and rulings is one of the necessity of this article. The purpose of this article is written with using library resources and descriptive-analytical method, is explanation the religious way that trading of the human body in its form is correct. Using Quranic verses, hadiths of the infallibles and sira Aqla., this result is obtained conditional the trading to the death of the owner of the human body and impossibility of delivering the subject of the trading at the time of its execution and the anonymity of time are the reasons for the invalidity of most tradings of the human body are. The transfer of the human body after death is valid only in the form of a will human body because conditional delivery of commodity does not invalidate the will.

**Keywords:** Medical education Body, Development of education, trade, death, property, ownership, achieved

### 1. Introduction

One of the most important areas of human exploration is health Which has paved the way for the formation of medical science. Medicine is based on the knowledge of the human body or anatomy. Although teaching anatomy should be done with the human body, Medical universities in our country are facing a shortage of bodies for various religious, legal, cultural and social reasons. The only solution is for medical universities to have access to the body. This is an important question in what legal way (including contracts and covenants) is the trading of a human body correct?

This question has given rise to many other questions. Is the human body property after death? What is the relationship between man and his body?

Because such questions are asked by people, especially the legislators if the legal nature of the human body trading is explained and tradings differ in many ways, such as in nature, elements, and effects. In addition to proving the dynamics of jurisprudence, it paves the way for people to take action and meet the needs of medical universities and facilitate medical education.

As this topic is new, no book, dissertation or article has been written in connection with the topic of discussion.

#### Fundamentals and concepts of research

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The word originally meant gold, silver and camels. (Ibn Athir, vol. 4, p. 372) Estate, demand and commodity are other meanings of this word. (Dehkhoda, undated, vol. 13, p. 1994)

The jurists have also defined wealth. What has a rational interest that is lawful and approved by the Shari'a, (Ansari, 1415, vol. 4, p. 9; Ardabili, 1403, vol. 8, p. 53) What human beings desire; (Khomeini, 1421, vol. 1, p. 37; Hakim, without history, p. 5) Something that is a means of meeting needs (Mohaghegh Damad, 1406, vol. 1, p. 111; Bojnourdi, 1419, vol. 2, pp. 29-30; Khoii, undated, vol. 2, p. 3-4) something for which the wise pay (Irvani, 1406, vol. 1, p. 8; Naini, 1413, vol. 2, pp. 364-365) is the definition of jurists for property. The common denominator of the above definitions is that none of them is a real definition (Naraqi, 1415, vol. 14, p. 304). Property is a customary concept and has no sharia nature. (Meshkini, undated, p. 465)

#### The human body is property.

Some jurists do not consider the trading permissible under the condition of property of the subject of the trading (Ansari, 1411, vol. 4, p. 9) and claiming that the human body is not property. (Mohammad Amin Batoush, undated, p. 319)

They say that property is a customary subject and is a function of things such as profit and price, none of which exist in the body. The attribution of the human body to property is in contrast to human dignity. The intellect and consensus of the jurists confirm this. (Allama Hali, 1414, vol. 10, p. 41)

In response to this claim, it can be said that the concept of property has been developed as a result of a change in custom. (Fayumi, 1414, vol. 2, p. 705) Today, the criterion of attaining wealth, which is the benefit of the lawful rational, exists in the human body. The human body is used after death for the development and advancement of medical sciences. This, which indicates self-sacrifice, is a source of respect for human beings and is approved by reason. In addition, some jurists believe that the property on exchanges is not a condition for the validity of the trading. (Khoei, undated, vol. 1, p. 34; Khomeini, 1434, vol. 3, p. 7)

### **Property**

The word property is used both as a source and as a noun. In the case of as a source, it means possession, monarchy, encirclement over something, and power over independent possession of something (Isfahani, 1412, p. 774). In the case of noun, it is something that man surrounds and reigns over (Sahib Ibn Ibad, 1414, vol. 6, p. 274).

Jurists define the property as their definition of property ownership is approximate and based on some of the common elements of "eligibility" is. (Islands, undated, p. 113)

### **Man owns his body.**

God is the true owner of all beings. This thing is obvious. Verse "Say, "O Allāh, Owner of Sovereignty, you give sovereignty to whom You will and You take sovereignty away from whom You will. You honor whom you will and You humble whom You will." implies this. Accordingly, some jurists have assigned property to God. They believe that man does not own his body, Therefore, without the explicit permission of God, he has no right to any possession of his being, including the trading of his body. God's true ownership of all beings and consequently of the human body causes human tradings are subject to God's permission. On the other hand the reasons that allow human tradings allocates to objects. Therefore, human tradings in his body is trading in other property is without the permission of the owner and is void.

In response to this claim can be said that God is the true owner of all creatures, including the human body is certain, there is no doubt about this. But this argument proves that man does not own his body.

True ownership of God is not in conflict with human ownership. Man can be the owner, but this ownership is during the ownership of God and is weaker than that. Sira Aqla is the reason for human ownerships. The religion of Islam considers human tradings to be correct and has not forbidden Muslims from them. By developing criterion of ownership of his body will be proven.

Even if man's ownership of his body is not proven, the trading of the human body is correct. Verses such as "O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent" (An-Nisā, 29) and "Allāh has permitted trade" (Al-Baqarah, 275) are enough to prove the accuracy of the body information. Imam Khomeini (RA) states in this regard: "The property ratio between the seller and the commodity is not part of the nature of the sale." (Imam khomeini, 1392, vol. 1, p. 26)

Some jurists consider man to be the owner of his body. Most of the arguments they have cited are verses such as "It is He who created for you all of that which is on the earth" (Al-Baqarah,29) and " Indeed, Allāh has purchased from the believers their lives and their properties"( At-Tawbah,111) The generality of these verses are the reason human ownership also includes his body.

### **Man's legal relationship with his body**

Different interpretations in the language of Sharia and law indicate the existence of a relationship between man and his body. Verses like "Allah Gryphon I Vamvalhm Nfs·hm believers." (Tawbah, 111) is indicative of the existence of such a relationship.

The following views have been expressed about the quality of this relationship:

#### **Man is the trustee of his body**

Another group of jurists believe in the ownership of human beings over their bodies.

Some jurists believe the human body is his trust and man has no property over his body. According to this view, the authority of the human body is in the hands of its true owner, God and man has no authority over his body except the trustworthy authority.

The most important of these views are verses and hadiths that indicate the ownership of God Almighty over the earth and the heavens and everything in them such as "To Allāh belongs the dominion of the heavens and the earth and whatever is within them" (Al-Mā'idah, 120)

According to this theory the ownership of the earth and the sky and all beings belongs to God Almighty. This allocation of ownership includes all aspects of human existence, including his body. Man has no right in his body and it must be accountable. Man is accountable to his body for a reason owning God. (Bahrani, 1423, p. 59)

#### **Man owns his body.**

Another group of jurists believe in the ownership of human beings over their bodies. One of these jurists is Ayatollah Khomeini. After explaining the relationship between ownership and property, He has stated types of ownership. He has said that there are four types of ownership.

Ayatollah Khomeini believes that real property belongs to God Almighty. After defining the inherent ownership of a person's domination of himself and his affairs, he writes: "Every person's deeds and soul are owned by that person's inherent ownership." (Khoi, undated, vol. 2, p. 5)

#### **Man dominates his body.**

Some jurists, such as Imam Khomeini reject the above two views have believed in the domination of man over his body. Imam Khomeini wrote in this regard: "Man dominates himself, just as he dominates his property." (Khomeini, 1434, vol. 1, p. 41) He does not accept man's ownership of his body.

On the surface, it seems that Imam Khomeini's view of the type of human relationship is opposite to that of Ayatollah Khomeini. But by examining Ayatollah Khomeini's view on the meaning of intrinsic property that was mentioned it should be said that the difference between these two views is only in expression and their nature is the same. Not that these two nobles are really against each other. This possibility is reinforced by the meaning of property as credit property in the words of Imam Khomeini, who is opposed to rights and domination.

Given the unity of nature of the two recent views that is, the relation of man's ownership and domination over his body, those who believe in these two promises, they have cited common reason. The most important reason of which is the rule that "people dominates over their property and lives." (Majlisi, 1403, vol. 2, p. 272)

According to this rule, man dominates his property and his life. This domination requires that man has no right to any action in his property and life. Except things that a specific reason indicates that it is not allowed. Hence, man has the right to trade in his body. Imam Khomeini considers the custom of selling blood as the reason for man's domination over his body and legality of the trading in it. (Khomeini, 1392, vol. 1, p. 42)

Numerous verses and hadiths confirm the rule of domination. The most important of these are: Verse "The Prophet has a greater right on the believers than their own selves." (AL-AHZAB, 6). This verse explains guardianship of the Prophet takes precedence over the believers over the guardianship of the believers. The primacy of the guardianship of the Prophet requires the existence of the guardianship of the believers over themselves. This verse is absolute and prove guardianship of the believers to them in all aspects, including property and lives.

A collection of hadiths that indicate the delegation of affairs to the believers. (Horr Amelii, vol.11 p. 424) According to the hadiths of Chapter Twelve, commanding the good and forbidding the evil, God Almighty has entrusted all believer Affairs to himself and he did not just allow to humiliate Himself. It is clear that the trading of the human body is one example of this and is subject to the permission and consent of the believer. (Moamen, 1415, pp. 163-165)

Hadiths that prove the right of qisas or amnesty from qisas or receiving diyat for the victim or his guardian, approves the rule of domination. (Horr Amelii, vol. 19, p. 132)

#### **Pillars of tradings**

Not every legal action creates the desired effect rather, in order to achieve the desired effect, the elements must have conditions and characteristics. In order for the legal action to be correct parties to the trading have the capacity to do it.

Obliged competence in tradings with wisdom, maturity and growth are achieved. (Najafi Sahib Jawaher, 1421, p. 466) The subject of the trading must be property. It is deliverable. Owned by the transferor. The amount, type and characteristics of the subject of the trading be known through description or observation. (Najafi Sahib Jawaher, 1421, vol. 11, p. 563)

One of the general conditions for the validity of tradings is that its provisions are clear. (Hosseini Ameli. 1419, vol. 16, p. 352) Suspension of tradings with condition or the adjective invalidates it.

Trading of the human body with the aim of advancing science if done in the form of a trading that suspension is part of its nature' The conditionality of the trading does not invalidate it.

### **The nature of human body tradings**

#### **Sale of human body**

In the word, it means giving a commodity and taking its price and buying and selling. (Farahidi, 1410, vol. 2, p. 265) This word does not have the truth of Sharia. (Hamedani, 1420, p. 16)

The seller and the customer must have legal authority. This trait is achieved by having three attributes of intellect, maturity and growth. The two must consent to the transfer of ownership. Reluctance, lack of ownership, bankruptcy and stupidity of the two are obtained, preventing the effect of the sales contract. (Najafi Sahib Jawaher, vol. 22, pp. 260-270)

If the trading of a human body is done through sale, the necessity of proper sale is that the body be transferred to the customer's property and the customer can take possession of it at any time in any way he wishes. On the other hand, the desired goal of this trading is the study of the human body after death aims to develop medical science, not that man is employed during his lifetime. Therefore, doing achieved of this sale is not possible.

This contradicts the principle of human dignity and freedom. Also, the verse "And do not throw [yourselves] with your [own] hands into destruction [by refraining]." (Al-Baqarah, 2, 195) does not give this permission to man. Therefore, this sale should be postponed until the death of the seller. On the other hand, given that it is not possible to deliver a human body at the time of the trading '(Shahid Thani, 1410, vol. 3, p. 249) assuming the trading is valid, the seller must also specify the time for delivery of the commodity to the customer. Lack of knowledge of the time of death of the seller's death leads to conditional ignorance. The condition of the unknown is void and the contract is void. (Shahid Thani, 1410, vol. 3, p. 505) Also, the human body is a certain commodity that it must be possible to deliver it to the customer at the time of execution of the contract for the purpose of the trading. The verdict allows this to lead to human suicide and it is not legitimate. The human body sale is not permitted.

#### **Hebeh of human bodys**

Hebeh is one of the religious ways of transferring property which literally means to give without exchange (Zubaydi, 1414, vol. 2, p. 477; Fayumi, 1414, vol. 2, p. 673) and is absolute forgiveness. (Mustafavi, 1430, vol. 13, pp. 209-210) The jurists have defined it as a contract that requires the possession of the same without exchange. (Tusi, 1407, vol. 6, p. 177; Ibn Idris, 1410, vol. 3, p. 54)

Hebeh is one of the contracts that contract and contract play a role in its realization and it cannot be realized without it. Delivery is effective if it is with the permission of the Vaheb.

The presence of the commodity in the recipient of the Hebeh hand before the contract is sufficient to realize the receipt.

Receipts in movable property are obtained by delivery and in immovable property by evacuation and removal of iodine. (Khomeini, Tahrir al-Wasila, 1392, vol. 2, p. 57)

It is a contract, so it must have the general characteristics of a contract. One of the most important is to be achieved.

One who intends to give a commodity to another, in order for the Hebeh to be valid, it must have certain conditions. Some of them are general features of contracts which include: Maturity, intellect, free will. Hebeh to someone who is reluctant and does not have to be right. Hebeh who is stupid and bankrupt is not valid. Ownership and freedom are other conditions for the Vaheb. (Najafi Sahib Jawaher, 1404, vol. 11, p. 472; Mohaghegh Hali, 1408 AH, vol. 1, p. 179)

In the recipient who is a forensic pathologist or a medical university, the ability to own the commodity is sufficient. Any product that is sold correctly is also Hebeh. (Allama Hali, 1414, vol. 10, p. 415)

The human body can be sold, therefore, Hebeh it is also correct. However, for the same reason as in the sale of the human body, Hebeh it is also not right' because the delivery of a human body during life is not legal and subject Hebeh of the body to the afterlife in addition to making the Hebeh conditional on an unknown time, it contradicts achieved of contracts and causes its invalidity. (Hosseini Maraghi, 1417, vol. 2, p. 191)

#### **Solh of the human body**

It means reconciliation and reconciliation between people. (Sahib Ibn Ibad, 1414, vol. 2, p. 459; Ibn Manzoor, 1414, vol. 2, p. 516) The jurists consider it as a contract that is based on composing compromises and eliminating hostility. (Mohaqeq Halli, 1408, vol. 2, p. 99)

Solh is an independent and necessary contract. Therefore, it must have the necessary characteristics of a contract. (Ibn Idris, 1410, vol. 2, p. 64)

All kinds of Solh are valid unless it makes halal haram or haram halal. The basis of this Solh is a narration of the Holy Prophet (Solh and blessings of Allaah be upon him). (Hoor Amelii, 1416, vol. 18, p. 443) Well-known jurists consider this hadith to have this meaning Solh is void to forbid what is lawful, such as not allowing the owner to live in the house and make it lawful what is forbidden like making sex lawful for someone other than the husband. (Fakhr al-Muhaqiqin Halli, 1387, vol. 2, p. 104) Some jurists believe that in addition to this meaning, If one of the conciliators is aware of the invalidity of the Solh, Such Solh makes the haram lawful for the person who has no right and it forbids the lawful for the one who has the right. (Shahid Thani, 1410, vol. 4, p. 173)

The executors of the Solh contract must be qualified to perform the contracts. The competence of those two comprehensive is intellect, maturity, intention, free will and not being an idiot and not being bankrupt. Their knowledge and ignorance of the subject of weakness has no effect on its accuracy.

Conditioning it to the death of the owner of the body whose time is unknown, causes the invalidity of the trading.

Solh on the trading of the human body after death is valid and effective, because it does not follow haram. The human body is property. Man owns his body. The trading of the human body has a lawful and rational benefit. The scope of Solh is wide. (Khomeini, 1392, vol. 6, p. 332) Even from the point of view of those who believe that the human body is not its property, does not own it, trading of the human body through Solh is valid.

In appearance there is no obstacle to trading of the human body in the form of Solh. Solh of contract is necessary. It is necessary to have the necessary contract features. Suspending tradings on a condition or attribute invalidates them. Achieved Solh on the human body is not possible.

. The effect of Solh during a person's life is his employment, which contradicts the dignity and freedom of man. The effect of this trading after death is to allow human suicide .

Neither is permissible.

Therefore, the Solh of the human body must be postponed until after the death of man. No one knows when he died. So this condition is unknown. Conditional contracts and agreements to unknown terms invalidates them. Therefore, the trading of the human body after death through Solh is also void.

### **waqf of human body**

The word means to stand, imprisonment and prohibition. (Ibn Manzoor, 1414, vol. 9, p. 359) The jurists use it to imprison the principle of property and free the interests. (Tusi, 1387, vol. 3, p. 286) The meaning of Waqf of property is prohibition of transferee seizures and wasting property.

The legal act of a waqf is a contract that waqf creates it. The specific waqf needs to be accepted, but the general waqf does not need to be accepted.

Intention to be close to God Almighty is a condition for the validity of the waqf because waqf is an example of charity and the consistency of alms is with the intention of getting closer to God Almighty. It is the intention of closeness to God that distinguishes the Waqf from the Hebeh. (Al-Kashif al-Ghatta ', 1422, vol. 2, p. 76)

The correct Waqf must be permanent. Most jurists, citing numerous authentic hadiths, consider permanence as a condition for the validity of waqf. The permanence of the Waqf means not being temporary to a certain time. Accordingly, if anyone says: "I waqf my property to someone for a year, this waqf is void." (Tusi, 1407, vol. 3, p. 548)

Conditional waqf, like other contracts and agreements, invalidates it but it is correct to condition the waqf on an attribute that has been obtained. (Najafi Sahib Al-Jawahir, 1404, vol. 28, p. 55)

Another condition of Waqif is the delivery of commodity. The waqif can terminate the waqf before deliver the commodity. Also, the waqf is annulled due to circumstances such as the death of the waqf and the loss of their competence. (Najafi Sahib Al-Jawahir, 1404, vol. 28, p. 64)

Expropriation of commodity from the property of the owner is the last condition for the validity of the waqf. Waqf will not be realized until the commodity are taken out of the waqif ownership.

Despite the custom, interprets the trading of the human body with "waqf" ; the waqf of the human body is not correct. The reason for the invalidity of the waqf of the human body is that the waqif must remove the commodity from his property at the time of the waqf. (Ibn Idris, 1410 AH, vol. 3, p. 171) and deliver it. (Najafi Sahib Al-Jawahir, 1404, vol. 28, p. 64)

Reasons to save lives, (Baqara 2, 195) hinder execution of this condition in the waqf. Conditioning the waqf of the human body after the death of the waqf is another reason for the invalidity of this waqf. (Najafi Sahib Al-Jawahir, 1404, vol. 28, p. 55)

### **Joaleh of human body**

The word means to put, to prepare. (Farahidi, 1410, vol. 1, p. 229; Isfahani, 1412, p. 197). The jurists have said in the definition of this word it is a contract in which a person is obliged to pay a certain amount of money in return for the legitimate and rational work that is done for him. (Khomeini, 1392, vol. 1, p. 586) It is type of hiring.

The Jael must have all the necessary qualifications, that is, he must be mature, wise, and rational, and he must contract with intention and authority, and he can legally seize his property. Whereas in Amel, no other condition is necessary except the intellectual and religious possibility of performing the action.

That is Amel must not have a rational or religious obstacle to perform the action.

Only prevent action from a rational and religious point of view. Child and crazy can be Amel. (Faqani, 1418, p. 149).

The action must be wise and lawful and not obligatory on Amel; Of course, it is not necessary to specify the specifications of the operation, for example, if he says that if someone brings my lost animal, I will give him ten tomans and he does not know what animal and where it is, the Joaleh is correct, but it must determine the type, sex and attribute of wages but determines its measure or weight or amount. It is not necessary for the Amel to be aware of the contract, it is only necessary that he does not do the work for free. (Khomeini, Najat al-Ibad, 1392, pp. 258-260)

By explaining the conditions Joaleh, it became clear that most of them are available in the trading of the human body in the form of forgery

Most of them are in the trading of the human body in the form of Joaleh. However, the human body cannot be wage. The reason is that Jael cannot pay wage after performing the action, because it leads to suicidal is permissible. Therefore, the payment of the wage should be postponed until after the Jael death. This condition is invalid because it is unknown and invalidates the Joaleh of the human body.

### **Will to deal with the human body**

It means connecting an object to something other than itself (Toreyhi, 1416, vol. 1, p. 437). Possession of the same or benefit or dominance over doing something after death is meaning that jurists have expressed for this contract (Shahid Thani, 1410, vol. 5, p. 11). The reason for naming this contract by willing is by this act, man transfers his authority in this world to after his death or he transfers the intention of closeness in life to the intention of closeness in the time after his death. There are two types of wills.

A will, like other legal acts, has pillars that must meet certain conditions in order for

For willing to be valid, testator must be completed. Perfection is the comprehensive testator of reason, maturity, not being bankrupt and not being an idiot. Therefore, the will of the insane, the drunkard, the idiot and the bankrupt is not valid. (Shahid Thani, 1410, vol. 5, p. 22) Th testator must be present at the time of the will and be able to become the owner. Accordingly, a will for pregnancy is valid if the child is born less than six months after the will, if the husband is present with the wife. Or if the husband is not present with the wife, the distance between the will and the time of the child's birth should not exceed the longest time of pregnancy. (Shahid Thani, 1410, vol. 5, p. 23)

A will is valid if it is given to commodity that can be acquired and transferred from one owner to another. Hence, a will to objects that can not be owned because of inferiority, like human excrement, or lack, like walnut skin or things that are not riches, such as Khmer, are not true.

It is also a will to things that cannot be transferred to another person, such as a waqf. A will is valid for a product that is not known or does not actually exist, but is likely to exist in the future. (Shahid Thani, 1410, vol. 5, p. 33)

If the person who is wise, mature and is not forbidden to trade, willing to the trading of his body with intention and discretion, there is no obstacle to the validity of the will of human body; because man dominates his body. Impossibility of delivering a will at the time of willing to deal with the human body does not invalidate the will. The reason for the validity of this will is that the nature of the will is possession after death and the receipt of the commodity is not a condition for the validity of the will.

### **Reluctantly in the jurisprudence**

The human body is property because it has all the features of the property. Man dominates his body. The rule of domination and numerous verses and narrations prove man's ownership of his body. However, the trading of the

human body through most of the sharia contracts and agreements is void. There are several reasons for the invalidity of human body tradings. These tradings must be conditional on the death of the owner of the body. Delivery of commodity after the trading is one of the rules of tradings. This ruling is not possible in the trading of the human body because it leads to the permissibility of suicide.

Therefore, the time of delivery of the body should be postponed until after the death of the owner of the body. The time of human death is unknown. Therefore, this condition is unknown. The unknown condition is both void and invalidates the conditional trading. Therefore, the arguments of sale, Hebeh, Waqf and Joaleh of the human body are invalid.

The trading of the human body after death is valid only by wiling because conditioning the will and delivery of the commodity at the time of the will and do not deliver the commodity at the time of the will does not invalidate it.

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