

Brain Death Between Jurisprudence and Medical Innovation

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Abstracts

This study aims to explore the multiple concepts of brain death through jurisprudence and medical innovation. The study focuses on understanding the interaction between these concepts and analyzing the challenges and problems they face. To analyze the multiple concepts of brain death and provide a comprehensive and balanced understanding of this issue from different perspectives. And also to know the ethical and legal challenges associated with determining brain death. The study included the jurisprudential, medical, ethical and legal community interested in the topic of brain death. The study followed a multidimensional approach and is guided by the methodology of literature review, comparative analysis, and applied analysis of medical trials. Previous studies and research were reviewed, including jurisprudential, medical, ethical and legal studies. The results showed a significant discrepancy in understanding and application between the jurisprudential concept of death and recent medical developments to address the ethical and legal challenges associated with determining brain death. The recommendations and directions for health and legal policies were to achieve harmony between the jurisprudential, medical and ethical dimensions of the issue of brain death. The research indicates the need for further research and analysis to better understand the interaction between the multiple concepts of brain death and to apply comprehensive and balanced solutions.

Keywords: Brain death, contemporary Islamic jurisprudence, Medical developments, Medical ethics.

Introduction

Brain death. The Uniform Determination of Death Act, which provides a legal basis for brain death (Greer, 2018) “irreversible cessation of all functions of the entire brain, including the brainstem. This is described as brain death.” In this issue, we will discuss brain death, or what is called “brain stem death.” Brain death is usually determined clinically and proving a permanent condition requires loss of function throughout the brain, including the brain stem. Such as deregulation of temperature or blood pressure, electrolyte or acid underlying disorders, or toxins or medications. (Parrott, 2018) If confounding factors cannot be eliminated, or if the examination cannot be performed safely or completely, an Additional testing is usually in the form of cerebral blood flow studies that evaluate complete loss of cerebral circulation (Lane, 2004). The catastrophe (death of the brain stem) is considered one of the most problematic and thorny catastrophes that greatly attracts the attention of jurists, jurists, and doctors. Because it relates to preserving the life of a respected and protected soul, and it is linked to one of the major comprehensive goals of legislation, which is the goal of preserving the soul.

Definition of brain death: (Al-Daqr. Nada Muhammad Naeem (1999). It is the permanent cessation of all functions of the brain and all its parts, as a result of permanent damage. In it (AlBar Muhammad Ali (1986). The importance of the disease in contemporary reality: There is no doubt that behind the interest of doctors in this disease and its extensive study (Ahmed. Belhaj Al-Arabi (2011), there is many factors, the most important of which are:

- 1) Brain death patients are considered the best source for donating organs, such as the heart, kidneys, lungs, pancreas, liver, cornea, and skin.
- 2) In addition, the costs of treatment for people with brain death in intensive care rooms are very high, and they require medical efforts and extreme care. Therefore, it is necessary for doctors to know the condition of this patient they are treating and to make all these efforts for him. Is he alive? Or dead? Because occupying a bed in intensive care for patients with brain death may deprive another patient of it who needs it, and miss the opportunity to save a life that could have been saved.
- 3) The psychological suffering of those around this patient, including doctors, therapists, family, and relatives, this suffering that may continue for days or months, to no avail or hope (Al-Daqr Nada Muhammad Naeem (1997). Despite the aforementioned justifications, they are not considered sufficient. Many contemporary scholars, including doctors, jurists, or jurisprudential and legal academics, consider it a legal, legal, medical, or moral justification to speed up and expedite the ruling on the patient's death due to brain death, on the basis that this calamity still needs more studies and field research. And clinical studies by trustworthy specialized doctors (Al-Daqr Nada Muhammad Naeem (1997).

Problem statement:

The research problem is the cultural and jurisprudential clash between the common jurisprudential concept of life and death and modern medical developments, especially with regard to the concept of brain death. While medical technology is used to determine death based on the cessation of brain function, there remain legal and ethical objections regarding whether the soul still exists in the body despite the cessation of brain function. This collision raises many questions regarding ethics, religious values, and legal legislation related to the care of patients suffering from brain death. There is also a need to understand how jurisprudential and ethical concepts evolve to match medical advances and to determine whether there is a need to reconsider traditional interpretations of religious fatwas in light of recent scientific developments. Therefore, the research problem is how to reconcile popular jurisprudence with recent medical developments in the field of determining brain death, and how to develop an ethical and legal framework that can provide a balance between the religious, medical and ethical dimensions of this sensitive issue. Because the consequences of this calamity are serious and great, we find jurisprudence academics, judicial departments, seminars, and medical conferences convening and discussing the dimensions of this calamity and its implications and legal, legal, and medical rulings. Therefore, there was hesitation and confusion, at the level of senior scholars, as well as at the level of international jurisprudence academics and respected fatwa bodies. At a time when some Islamic jurisprudence academics and fatwa bodies see brain death as a real death with its legal consequences, we find others from those academics Fatwa bodies and Sharia

councils do not consider it a real death, as the issue still remains - more than half a century after its appearance (Marhaba, Ismail (2011), it requires further research and study, and this, if any, indicates the seriousness and sensitivity of this calamity, and therefore some have acknowledged Researchers and professors who were exposed to it said that it requires more research and study (Al-Daqr. Nada Muhammad Naeem (1999); judging a thing is a branch of its perception (Ibn Qayyim Al-Jawziyyah, (1996), and this calamity requires precise perception, careful consideration and understanding, in order for it to be completed. A clear investigation of its meaning then comes the Shari'a ruling. In presenting this issue, I will discuss the sayings of the scholars who are experts and specialists regarding this calamity without detail, to explain the impact of the words of the experts on the difference in the Shari'a ruling of the aforementioned calamity (Al-Daqr Nada Muhammad Naeem (1997), Muhammad Ali (1986).

Research questions

Based on the research problem, the following questions can be formulated:

1. How is brain death defined in common Islamic jurisprudence, and what are the foundations and standards followed in determining it?
2. What are the recent medical developments related to determining brain death and how do they affect common jurisprudential understanding?
3. What are the ethical and legal issues raised by brain death cases?
4. How can compatibility be achieved between jurisprudential theses and modern medical developments with regard to determining brain death?
5. What is the role of religious bodies and the medical community in developing a balanced ethical and legal framework for dealing with cases of brain death?
6. How can legal and medical research be used to guide health and legal policies related to brain death?
7. What are the cultural and religious factors that influence views on brain death and how can they be dealt with in the context of health legislation and regulations?

Research objectives

Based on the research problem and questions, the following research objectives can be identified:

1. Understanding the concepts of brain death in common Islamic jurisprudence and modern medical developments related to it.
2. Analyze the ethical and legal challenges facing the interaction between the jurisprudential concept of death and medical developments.
3. Study the impact of modern medical developments on jurisprudential jurisprudence in determining brain death and accepting or rejecting it.
4. Providing an ethical and legal framework that helps achieve a balance between religious and medical concepts in the field of determining brain death.

5. Explore the role of religious bodies and the medical community in developing policies and procedures related to brain death. Directing recommendations for health and legal policies to enhance understanding and harmony between the religious and medical dimensions of brain death cases. Opening the door for further research and study in this field and directing efforts towards developing other concepts related to determining death based on medical technology.

Methodology

This part includes a review of the most important studies and research published in this field, including jurisprudential, medical, ethical, and legal studies. This review aims to understand the strengths and weaknesses of previous research and to identify gaps that can be filled by current research. Textual analysis: Religious, legal and medical texts can be analyzed to understand the concepts and foundations that govern the interaction between parties involved in the issue of brain death. This includes analysis of the most important religious fatwas and laws. Legal and Ethical Methodology: Taking legal and ethical methodology into all aspects of the research. All activities must be consistent with relevant ethical and legal principles. Considering these methodologies, research can be designed in a structured and comprehensive manner to effectively and accurately achieve the set objectives.

Literature review

Brain death in Islam: It is defined as the departure of the soul from the body. The concept of brain death was mentioned in the legal description of death in Islam in 1986 with the “Fatwa of the Islamic Jurisprudence Academy of the Organization of the Islamic Conference regarding the life support system.” Over the past 25 years, Western countries have launched a “jurisprudential debate on brain death.” However, additional updates and developments of Islamic bioethics are still waiting to keep pace with the ongoing progress in this regard. (Atigetchi, (1996). In contrast to current UK guidance, the UK Brain Death Committee (2019) stipulates that an electroencephalogram (EEG) should be performed prior to establishing a diagnosis of brain death, while other ancillary tests are optional and may Islamic and healthcare scholars equated brain stem death (Al-Bar M, (2015)) and permitted the cancellation of life support procedures after the Islamic Organization for Medical Sciences (IOMS) meeting. Later, a fatwa issued by the Islamic Fiqh Academy of the Organization of the Islamic Conference on life support included the concept of brain death in the legal description of death. The death of an individual is declared according to Islamic law. Accordingly, all conditions of Islamic law apply in the event of death if one of the following two conditions is met:

1. There is a complete and irreversible cessation of heart and lung functions.
2. There is a complete and irreversible cessation of the entire brain function with the onset of disintegration.

Many Islamic countries have applied this classification of death after the adoption of what is known in the United States of America as the Uniform Determination of Death Act (UDDA),

which stipulates that: a person who suffers from a permanent cessation of heart and respiratory functions, a complete cessation of brain function permanently, including: That's the brainstem. The diagnosis of death must be made in accordance with recognized medical procedures. (National Conference of Commissioners on Uniform State Laws 1981).

In December 1987, the Council of Jurists of the Muslim World League, meeting in Mecca, and its Decree No. 2, rejected equating cardiac death with brain death. Although it does not accept brain death as a loss of human life, it has supported previous fatwas regarding organ donation and transplantation. Organ procurement is permitted only if irreversible cessation of the cardiovascular system is documented (Albar MA. (1996) However, although the Islamic jurisprudential debate on brain death was launched 25 years ago in response to Western ethical deliberation, more Bedir A, Aksoy S. (2011) Renewal and development in Islamic bioethics is still pending to keep pace with the continuous progress in this regard.

While in the medical system in North America, the death of an individual is linked to the cessation of brain function (i.e., brain death), in Jordan, Palestine, and the Arab world, any biological sign of life is considered an indication of the existence of life. The existence of the soul, even if it is fleeting. Kirschen MP (2019). Dr. Safwat Lotfy, a consultant in intensive care and anesthesia from Cairo University School of Medicine in Egypt, has started a movement to educate medical practitioners, religious leaders and scientists about the dangers of recognizing "brain death" as a medical fact. The majority of Egyptian doctors did not believe that organ transplantation of all types should be considered illegal (as Dr. Lotfy stated), although many of them took contradictory positions on the more controversial differences. There has been a significant backlash among medical practitioners, in the media, theologians, and parliament, in response to Dr. Lutfi's lobbying efforts regarding uncertainty about brain death and his use of validating organ donation, suggesting that he has forcefully touched on a sensitive issue. In the common practice of medical services Ebrahim AF. (1998) ((Gostin LO. (2014 Gray C. 2002).) Doctors have not succeeded in "reinventing new death" using media 2021) (Greer has not yet established organ procurement within current practice. Lawmakers and doctors are still debating Whether brain death can be morally and legally equated with human death (Haque 2008) and in Jordan, Palestine and the Arab Islamic countries, death is not the same as in areas where brain death was medically acceptable (Sharp LA (2006)) that death is imbued with values Religious such that it is not necessary to give a new meaning to it and this is how living American family members tend to explain their motivations for donating their loved ones' organs (Hamdy (2019).

The state of controversy surrounding brain death also appears in the face of the multiplicity of opinions that have emerged in the fruitful evaluation of the condition of brain-dead patients. (Lewis (2021)) There is only one way to engage effectively in this pluralism and that is to highlight the many problems that have become associated with this discussion. From social and economic inequality to the logistics of transport and management of organ donation, and the economic burden Wickham CR (2002). All of these inquiries continued unaddressed and ignored, amidst a major media frenzy (Young GB 2006) surrounding established figures questioning the progress of science against religious and cultural conservatism. These numbers mask the appropriate diagnosis and wording of the question. (Russell (2006)) This means that asking whether a brain-dead patient is "truly" dead is different from asking whether medical

procedures can legitimately offset the profits of treating people (Nguyen D. (2020)) Suffering from organ failure and the costs of hastening cardiopulmonary death in brain-dead patients. And not justifiable and reasonable concerns about justice and fairness. (Bedir A, Aksoy, 2011) (Wijdicks, (2010)).

Editing the site of the dispute:

Scientists and doctors have agreed that if someone is brain dead and his heart stops beating completely, he is sentenced to death. Because these signs indicate the departure of the soul from the body and this is the reality of death. (Seifi, 2020). They also agreed that if something happens to his brain that prevents him from performing his task, and the symptom is known, and it is known that it will disappear even after a while, such as patients who live a vegetative physical life due to damage to the brain or cerebellum, then his life is ruled, even if he continues in this state for several years (Al-Saeedan 2014) The disagreement between them is whether the brainstem dies and the heart is still beating, is this sufficient to legally condemn him to death, or not? This means that the brainstem is the dividing line between life and death from the point of view of some contemporary doctors. Doctors and people with experience and specialization in this calamity have two approaches:

The first approach: It is believed that whoever has his brainstem dead is considered dead. (AlShanqiti (1994), and this is the opinion of most doctors. Among the doctors, experts and specialists who represent this opinion is Dr. Ahmed Sharaf El-Din, who is one of the first to speak and write about this topic from the Islamic point of view in his book (The Sharia Provisions for Medical Works). (Sharaf Al-Din 1983) and Dr. Muhammad Ali Al-Bar in his book, which is considered one of the most extensive books written in Arabic on this subject (Death of the Heart or Death of the Brain) and others (Al-Daqr (1997). It is represented by some contemporary jurists and researchers, including: Sheikh Dr. Muhammad Al-Mukhtar Al-Salami, Dr. Muhammad Naeem Yassin, and the Chairman of the Fatwa Committee at Al-Azhar, and among the jurisprudence councils and seminars: The Council of the Islamic Jurisprudence Academy of the Organization of the Islamic Conference in its third conference session held in Amman, the capital of the Hashemite Kingdom of Jordan in 1986, and it issued a fatwa. It has some fatwa houses; Such as Egypt, and decided by the Islamic Organization for Medical Sciences in Kuwait. This team has evidence that supports what they believed, (Fathallah, Waseem (2006).

The second approach: It is believed that whoever has his brainstem dead is not considered dead, and this is the opinion of some doctors (Al-Khathlan, Saad bin Turki Among the doctors and experts and specialists who represent these opinions are: Doctor Ahmed Shawqi, Saad bin Turki, Raouf Mahmoud, Dr. Safwat Hassan Lutfi, Dr. Muhammad Mustafa Al-Dhahabi, and others. It is represented by most contemporary jurists and researchers, including: Sheikh Dr. Jad Al-Haq Ali Jad Al-Haq, former Sheikh of Al-Azhar), Sheikh Dr. Muhammad Saeed Ramadan Al-Bouti,

Dr. Tawfiq Al-Wa'i, Dr. Aqeel Al-Uqaili, Dr. Bakr Abu Zaid, Dr. Muhammad Suleiman AlAshqar, and from the jurisprudence academies and seminars: the Council The Islamic Research

Academy at Al-Azhar in its 28th session of 1992, held under the chairmanship of the Sheikh of Al-Azhar, the Fiqh Academy of the Muslim World League in its eighth, ninth and tenth sessions

in Mecca in the year 1408 AH - 1987. Thus, the “Symposium on Human Life: Its Beginning and End in the Islamic Concept” held in Kuwait in 1985 - 1405 AH recommended He is the one who is required to issue a fatwa in the Fatwa Committee of the Kuwaiti Ministry of Endowments, and he is the one who is required to issue a fatwa in the Permanent Committee for Scientific Research and Fatwa in the Kingdom of Saudi Arabia, and the decisions of the Council of Senior Scholars in the Kingdom of Saudi Arabia, which is that the death of a person’s brainstem without his heart is not considered death, but rather it must stop. His heart stopped beating too. This group has evidence that supports what they have argued. After this brief presentation of scientists’ attitudes toward this issue, we find that experienced and specialized doctors have two distinct and different opinions regarding the condition of this calamity. One of them believes that brain stem death is a real, inevitable, and certain death, and the other believes that brain stem death is not a definite death like death by cardiac arrest and cessation of circulation. Blood circulation and breathing.

Based on this difference in the statements of experienced and specialized doctors in adapting and clarifying this calamity, we find the clear difference and discrepancy in the fatwas, recommendations and decisions issued by jurists, jurisprudence councils, seminars, bodies and Sharia councils. From here, we see the clear and significant impact of the multiplicity and differences of opinions of experts and specialists, and the extent of its impact on the difference between jurists in clarifying the legal ruling based on it.

Sayings of jurists regarding brain death:

Jurists have two opinions on the issue:

The first opinion: The proponents of this opinion believe that if doctors prove that the brainstem has died, then this person is truly sentenced to death, and it is not a condition that the heartbeat stops. This statement was taken by the Council of the Islamic Fiqh Academy in Jeddah in its Resolution (No. 5, 1986), and a number of contemporary jurists and doctors agreed with it (AlQaradawi). (2003,

The second opinion: Those who hold this opinion believe that the death of a person’s brainstem is not considered real death, but rather his heart must stop beating as well. This is what was decided by the Fiqh Council of the Muslim World League at its tenth session in Mecca in its Resolution (No. 2 in 1987). (Baz, Abdul Aziz. 1999).

The first is the statements of the supporters, their evidence, and the basis of reasoning.

The first statement and its evidence:

The first opinion: The proponents of this opinion believe that if doctors prove that the brainstem has died, then this person is truly sentenced to death, and it is not a condition that the heartbeat stops. This statement was taken by the Council of the Islamic Jurisprudence Academy in Jeddah in its resolution (No. 5, in 1986), and a number of contemporary jurists and doctors have agreed to it (Al-Qaradawi, Yusuf, 2003(,

Second section. Their evidence:

The Holy Quran:

Allah Almighty said: {And We did not send before you except men to whom we revealed. So ask the people of the Remembrance if you do not know} (Surat An-Nahl, verse 43). Abu Dawud 202 mentioned in his Sunan the hadith of Abu Hurairah, may Allah be pleased with him. The Messenger of Allah may Allah's prayers and peace is upon him, said: {if the newborn has the beginning, he inherits}. Al-Sijistani, Suleiman bin Al-Ash'ath Abu Dawud (1389 AH). Ibn Majah 2764 mentioned in his Sunan the hadith of Jabir bin Abdullah, may Allah be pleased with him, who said that the Messenger of Allah, may Allah bless him and grant him peace, said: (A boy does not inherit until he starts screaming. He said: And his start is when he cries, shouts, or sneezes. (Al-Qazwini, Muhammad bins Yazid (2009).

Reasonable:

The soul affects the body, and one of its effects is voluntary movement, as every voluntary activity carried out by a person is considered one of the effects of the soul (Al-Ghazali) 1900. It was stated in "Al-Biwa": The meaning of the soul's separation from the body is the cessation of its behavior from the body due to the body's abandonment of its obedience. The meaning of death is the cessation of its behavior, About the body and the exit of the body, about being an instrument for it. The inability of the organs to serve the soul and interact with it is evidence of the paradox of life, and this is present in the case of brain death. There is no legal text from the Qur'an or Sunnah that specifically defines death and its signs. This means that the Law has left it to human effort and human experience that can be developed with the development of human knowledge. It can be asserted that the end of a person is when his brain dies, even if the heart is beating and if the lungs are breathing. If the doctor confirms that the brain is dead (Al-Mutairi 2015). While the patient is breathing and his heart is under assistive devices, there is no harm in him deciding that this person has died.

Reasoning point:

The reasoning behind Surat An-Nahl, verse 43: (So ask the people of the Remembrance if you do not know.) Those doctors are specialists and experienced in this field, and are entrusted with the human body, so jurists must accept what they say regarding their function, and they have sentenced a person to death if the brain refuses to accept nutrition.

The reasoning behind the hadiths:

That is, what is considered is voluntary movement such as screaming, while forced movement such as sneezing is not considered (Al-Salami, Muhammad Al-Mukhtar, 1999). A brain dead person is considered to have lost the basic phenomena of life, and only has some of their manifestations remaining, so he is not judged to be alive merely by breathing, by analogy with a newborn who is not judged to be alive if I found some aspects of life in it, such as breathing, urinating, sneezing, and movement, if it did not start out screaming.

Saying that brain death is not accepted is death and denying it at all.

First: Explaining the statements of those who say that brain death is not death and denying them absolutely: The second opinion: Those who hold this opinion believe that the death of a person's brainstem is not considered real death, but rather his heart must stop beating as well. This is what

was decided by the Fiqh Council of the Muslim World League at its tenth session in Mecca in its Resolution (No. 2 in 1987) (Baz, Abdul Aziz. (1999).

Second: Evidence of those who say that brain death is not death and its absolute denial:

The Holy Quran:

Allah Almighty said: {Then We resurrected them that we might find out which of the two parties was counted when they had remained for a while. (12) We narrate to you their report in truth.

Indeed, they are safe young men And We have increased them in guidance” (Surat Al-Kahf, verse 11-12).

Sunnah:

A hadith mentioned in (Sahih Al-Bukhari, Hadith, 3455) Muhammad Ismail Al-Bukhari. The Messenger of Allah, may Allah bless him and grant him peace, said: “Among those who came before you was a man who had a wound, and he became frightened, so he took a knife and cut his hand with it, and the blood did not stop until he died. Allah Almighty said: My servant hastened to me with his soul, and I have forbidden Paradise for him.” Jurisprudential rules:

Certainty is not removed by doubt: The significance: The certainty in this case in which there is disagreement is the patient’s life in principle and because he has a heartbeat, and the doubt about his death because his brain is dead, so we must have certainty that necessitates a ruling on his life, until we find a similar certainty that obligates us to rule on his death. (Ibn Najim, 1999))

The principle is the continuation of what was as it was: The meaning of the meaning is that the principle is life, and therefore the matter should remain as it is, Ibn Abd al-Salam. (1992)

Recommendation:

The patient before brain death is agreed to consider him alive, and the ruling is approved in this disputed case and the statement that he is alive and his soul remains because his pulse remains (Ibn Najim 1999), and the approval is taken from the reliable sources of Sharia unless there is conclusive evidence to the contrary. (Masarwa, 2009)

Preserving the soul is considered one of the goals of Islamic law, and preserving it is one of the five necessities. The ruling regarding the patient in this case as alive involves preserving the soul, and this great goal is consistent with Islamic law (Abu Zaid 2017232).

Third: The reasoning of those who say that brain death is not death and its denial at all.

The Holy Qur’an: Surah Al-Kahf, verse 11 (So we struck their ears in the cave for a number of years)

Meaning: Stories, i.e. we awakened them.

These two verses contain clear evidence that the mere loss of sensation and feeling alone is not considered sufficient evidence to rule that a person is dead, because these people lost sensation and feeling for 300 years and were not considered dead, and the ruling on considering brain death as death is based on the patient’s loss of feeling and sensation, and this alone is not considered

sufficient for the ruling. Death, because this verse indicates that it is not considered given the long period of time that passed for the People of the Cave (Al-Shanqeeti, Muhammad ibn Al-Mukhtar).

Sunnah:

The significance of the hadith:

In this hadith, the Prophet, may Allah's prayers and peace be upon him, tells of a man who was among the nations before us, and he had a wound, and he was frightened, meaning: he was not patient with his injury, and despaired of it, so he took a knife and cut his hand with it, meaning: he cut it off, and the blood did not ooze until he died. That is, the blood did not stop until he died, and Allah Almighty said: "My servant hastened to me with his soul, and I have forbidden Paradise for him," and this is a metaphor for hastening death. Because a man did not kill himself hastening, that is, hastening, according to his appointed time, but rather he called it initiative. Because of the presence of her image, but he deserved to be punished. Because Allah did not inform him of the expiration of his time, so he chose to kill himself, so he deserved to be punished for his disobedience, and his saying: "Paradise has been forbidden to him," has been mentioned in meaning: It was said: He had deemed that act permissible and thus became an infidel, and it was said: He was an infidel in the first place and was punished with this pain Extra stubborn On his disbelief, and it was said: What is meant is that Paradise was forbidden to him at a certain time, such as the time in which the forerunners entered, or the time in which the monotheists were tortured in Hell and then came out, and it was said: It is possible that this was the law of those in the past; Those who commit major sins are disbelieved by committing them, and it has been said otherwise. Al-Shanqiti, Muhammad bins Al-Mukhtar (1994).

Accordingly, the issue of brain death arises, as his life depends on these devices, which perform the function of breathing, so stopping these devices is like the action of the man who stabbed the wound, as he soon dies in most cases, with varying duration and hour. What is learned is the prohibition of taking away the cause to which the life of one who is about to die is attached, and this indicates that his life is considered, no matter how connected or dependent it is on weak causes, and this is absolutely not consistent with sentencing death to everyone whose brain is dead. (Fath Allah, 2008)

Third: Responding to the evidence.

Discussing the evidence for the first statement: (Hello, Ismail Ghazi 2011)

The talk:

The hadith indicates that screaming is considered and other evidence is not considered, whether it is a voluntary or involuntary act, and thus it is not a valid inference.

Reasonable:

We do not accept what you mentioned. A brainstem patient is fed with nutritious liquids, but rather with food prepared in liquid form and given to him through a stomach tube or through an IV, and his body accepts and receives the food. All of these things are nothing but signs of life. (Fath Allah, 2008).

Discussing the evidence for the second statement:

The Holy Quran:

Brain death is based on the disappearance of feeling and feeling.

This is what no one said. Rather, the human life command center has stopped, as there is no life left in it after the life support devices are removed. The doctors agreed that there is no hope of restoring the life of someone whose diagnosis of brain death has been proven, so that if these devices are disconnected, breathing stops irreversibly. (Al-Mutairi 2007). This is beyond dispute, and what happened to the cave dwellers was a natural state of sleep, and not a kind of fainting, nor a kind of death, and it was a miracle for these young men. (Al-Hajri 2006)

Among the rules and recommendations: The certainty, principle, and recommended situation is the continued existence of life, until there is evidence of its disappearance. What has been scientifically proven is that someone whose brain is dead no longer has hope for the survival of life. (Al-Khathlan (2020). It is reasonable: One of the objectives of Islamic law is to preserve the living soul, but not the dead. This is according to those who say that someone whose brain is dead is dead. Ammar. (2015).

The most correct opinion on the issue and its justifications.

First: The most correct statement:

After presenting what each party relied on regarding the ruling on brain death, and after discussing the evidence, and accordingly, the opinion that appears to be the most correct in the matter is what was adopted by those who held the first opinion, considering brain death as the death of a person. (Ammar 2015)

Second: Justifications for the more correct statement: (The Righteous One) (1986).

The strength of the evidence for the first statement and the evidence provided for the second statement from the discussions. After a person is hanged, blood circulation from the brain stops while the heart continues to pump blood for up to twenty minutes. Here there is no doubt that he died with his heart beating and some of his organs continuing to carry out their functions. A brain dead person is like a hanged person. Both of them have their heads dead and their brain cells damaged. Because the specialists have decided that, and their saying takes precedence over the saying of others, because their saying is based on apparent experience, experimentation, and consideration of hundreds of cases, and the majority of contemporary jurists have suggested that a person dies due to the death of his brain. As for the jurists who say that brainstem death is not considered real death, what they mostly based on is the certainty that life will remain. Brain death is speculative, and the truth is that the apparent signs of death according to jurists are speculative and not certain, unlike what doctors have come up with in terms of diagnostic devices that are more accurate than speculative signs. Rather, we may find that doctors, with their

Methods and experience are more accurate in determining brain death.

Methods: This study was designed based on the method of collecting information from references, sources, and library studies, and exploring various texts that have been published in

the field of brain death. Relying on Qur'an verses and Prophetic hadiths. As the most important and accessible source it has been given utmost importance in this article. Many articles that dealt with brain death from medical and jurisprudential sciences were listed, as well as articles that dealt with brain death in jurisprudence. The opinions of experts and the opinions of contemporary doctors and thinkers were also taken into account. In addition, distinguished scientific websites approved as scientific reference were explored. It also took into account the jurisprudential fatwas issued by contemporary scholars regarding brain death, especially scientific conferences that addressed the issue of brain death in many Arab and Islamic countries.

Discussion: Brain death is currently considered the end of life. According to religious scholars, jurists, forensic and medical experts, the organs of brain-dead patients can be donated for transplantation. The pros and cons of transplanting organs from brain dead patients have many reasons. Opponents gave two reasons to support their position.

First: they declare that the issue of life or death from a jurisprudential standpoint has no religious or jurisprudential character. That is, none of the Quranic verses and hadiths explicitly explains the concept of human life and death. However, there are different provisions in Islamic jurisprudence related to life and death. This indicates that Islam bases understanding of the issue of life and death on common customs and assessments. Rather, it refers to the common and apparent signs that jurists rely on. Where the legislator does not define or explain an issue, but rather issues rulings, this means that understanding returns to custom, and then custom is recognized and applied. Concepts such as contracts and transactions fall into this category.

Opponents believe that the true religion has based the understanding and interpretation of death and life on prevailing customs and must exist among the public. Therefore, we should not determine life and death by special customs, which are the opinions of doctors and medical scientists. The prevailing assumption is that a person is alive as long as the heart and breathing function, and there is no other criterion. In popular opinion, cessation of brain function is not the end of a person's life. Opponents argue that if there is no evidence to prove whether the patient is alive or dead, uncertainty arises either from doubt in the concept or from doubt in the external example. Hence, the principle of practical approval (i.e. continuation of previous beliefs and customs if there is doubt) is widely accepted by jurists. It is to consider a person alive and apply the provisions of a living person. The indication here refers to what has been recorded in the patient's medical history and whose survival we currently doubt. Therefore, the continuity and sustainability of certainty is correct. The certainty of a brain-dead patient is life and the provisions of life associated with it. Therefore, upon brain death, judgments regarding the survival of life and the continuity of judgments related to it must be informed.

It is the custom and habit of the people that a person is considered alive as long as the heart and respiratory system are active. However, the true supporters of the validity of brain death have defined death: The brain-dead patient is considered dead according to the interpretations and conclusions that some supporters understood from a number of verses and hadiths, that in some verses and hadiths. A brain-dead patient is considered dead according to the provisions of the verses and hadiths.

Second: The legislator never provided a definition of brain death. Rather, it is conclusions and inferences from a set of some texts. When the legislator provides a definition of a concept. The reference to custom is meaningless. There is also evidence that mere heart rate cannot be evidence of life.

Third: In the event of doubt about the proven death, one must refer to a special custom, even if the first hypothesis is accepted and the validity of death known as brain death is denied. However, according to what the jurists have stated regarding unstable and unsustainable life, the effect and provisions of the first hypothesis cannot be applied or relied upon. On it, the Qur'an says, Surah An-Nahl, verse 32 (Those whom the angels take to death). "Indeed, those who were taken by the angels, wronging themselves, said, 'Why were you?' They said, 'We were weak in the land.' They said, 'Is not the earth of Allah wide? They emigrated therein. Their abode is Hell. It is an evil destination.'" (The Holy Qur'an, Surah An-Nisa, verse 97).

Results

Brain death is considered the end of life in religion and medicine. Brain death is considered by many doctors and jurists to be the end of life, and based on what was mentioned, removing the vital organs of a brain-dead patient and donating them to other patients is not considered intentional or unintentional murder. In the event that the omission, by the doctor or any other person, which does not provide or improve the survival of the brain-dead patient, in fact, does not constitute a crime or an illegal act according to Sharia law. The omission in this case will be defined as a specific criminal act and stipulated in the Islamic Penal Code. In general, a person with brain death is not known to be a known living person. Failure to provide assistance to patients found to be brain dead does not constitute a legally defined failure to assist persons who have been injured. It is certain that disconnecting the devices connected to the body of a person suffering from brain death does not amount to intentional or semi-intentional murder. Patients suffering from brain death are lifeless; therefore manslaughter or culpable homicide cannot be applied in these cases. If brain death patients are viewed as people who have a full life but are in a comatose state. They have a life in a coma. Amputating their organs is equivalent to amputating the organs of a person who lives an unstable and unsustainable life. This is considered an unlawful assault, and is not permissible by law or law. Amputating the organs of a brain-dead patient in order to transplant them and donate them is similar to amputating the body of a dead person for those who consider brain death to be real death. If a Muslim's life depends on donating an organ from a brain-dead patient, some fatwas permit the donation of organs from a brain-dead patient after the approval of his family and guardians, and with the presence of a qualified and specialized medical team who confirms that he is brain-dead after completing all necessary medical procedures to confirm brain death. He considers this to be the amputation of a

dead body. Thus, it can be said that some jurists have permitted transplanting the organs of braindead patients - with the approval of the brain-dead patient's guardians - and donating them to others. Thus, it is permissible to donate the organs of brain-dead patients to others.

Conclusion

- 1- The central nervous system in the human body consists of the cerebrum, cerebellum, and brainstem.
- 2- The brainstem is considered the primary responsible for controlling breathing, the heart, and blood circulation.
- 3- The death of the brainstem causes the death of the entire brain within hours. The death of the brain stem is what leads to the end of human life from a medical standpoint.
- 4- What is meant by brain death is the permanent disruption of all brain functions.
- 5- Death, in the terminology of jurists, is the departure of the soul from the body.
- 6- The departure of the soul from the body means that no life system remains in it.
- 7- The jurists did not mention that cardiac arrest is one of the signs of death due to the lack of scientific or medical means. What they relied on were signs observed by observation.
- 8- Scientists have agreed that it is permissible to remove the devices if the lungs and heart work only automatically.

Recommendations:

- 1- Establishing laws and legislation (regulating the use of brain death), especially since brain death has spread widely as a result of traffic accidents.
- 2- Establishing specific, clear and precise controls and conditions for diagnosing brain death, bringing together various international medical schools.
- 3 - Putting all the scientific and medical data available to specialist doctors in the hands of Islamic jurisprudence scholars and jurisprudential academies to help them make a clear and accurate decision in determining the position of Islamic law on brain death.

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