

Investigating possession of human blood as a property in Iran's law with regard to legal and Islamic jurisprudential commentaries on organ transplant

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Abstract

A question that most of jurists are faced with is, whether human blood is basically a property or not and is human the owner of his blood? Moreover, what is the difference between blood and other organs of the body from the viewpoint of ownership? If blood is a property, why human is not the owner? Unlike blood, there have been legal discussions on organ sale, where blood can be retrieved by the body while segregated organs are not retrievable by the body. Investigating various views about ownership of organs of the body, one can conclude that blood is a property owned by humans.

Keywords: organ transplant, human blood, property, possession, proprietorship of blood.

JEL Classification: K11, K32

1. Introduction

Recently, with the accelerated flow of medicine on organ transplant and blood transfusion, some issues are raised between jurists including:

Whether the blood is a property or not?

Can anyone imagine proprietorship for human blood?

If blood is a property, why human is not its owner?

It is evident that with accurate answers to the aforementioned questions, the act of blood sale can be legalized under the legal forms of transaction. Otherwise, the ongoing controversial debate of juridical-legal comments on the sale of human organ will cause the undeniable fact of blood sale to remain legally ambiguous. Concerning the legal and Islamic jurisprudential commentaries on organ sale, the present article investigates property and proprietorship of human blood with analysis of verses from the Holy Quran and viewpoints of different jurists.

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2. Investigating possession of Human Blood as a property

2.1 Terminological analysis of Property

Property in a word means something owned by somebody, something worth for sale, everything could be possessed³. It also means possession⁴. With regard to law, property has two features:

1. Being useful and meet a necessity whether financial or spiritual.
2. Assignable to a person or people⁵.

Nevertheless, from the viewpoint of Islamic jurisprudence, something is property that:

- 1) Should have a sensible profit.
- 2) Should be religiously considered legal. For example, wine is not religiously legal and has no legal proprietorship⁶. Jurist from the Sunny sect of Islam define property as something that has a real profit and is religiously legal even out of force module conditions⁷.

Elements of Property:

Studying juridical and Islamic jurisprudential resources, one can conclude those elements of the property are as follows:

- 1) Should be assignable to person (natural or legal)
- 2) Should be transferable
- 3) Should be of profit
- 4) Should be of sensible profit

Considering blood, it has all the aforementioned four elements because it belongs to a natural person; beside because of the progresses in the field of medicine, it can be easily transfused to other people; and lastly, there is no doubt that blood sale or transfusion is of sensible profit nowadays.

3. Possession and its characteristics

3.1 Possessor and possession in terminology and expression

Possessor means a person who has something and is able to do whatever he wants with his property⁸. From the viewpoint of law, the possessor is a person who can do whatever he wants with his property except what is banned by law (Civil Law, Article 30). In legal contexts, possession means to have the right to utilize or

³ Moein, Mohammad, *Persian dictionary*, 9th edition, vol. 3, Sepehr Publication, Tehran, 1996, p. 3708.

⁴ Amid, Hasan, *The Persian culture*, volume 2, Amir Kabir Publication, 1985, p. 1738.

⁵ Katouzian, Naser, *Preliminary course of civil law for property and possession*, 7th edition, Mizan Publication, 2003, p. 19.

⁶ Kafi Ghomshee, Mostafa, *An introduction on jurisprudential and juridical investigation of human organ sale*, 2012, 1th edition, Jungil publication Ghomshee, 2012, p. 12.

⁷ Yasin, Mohammad Naem, *Human organ sale*, Kuwait, „Journal of law”, no.1/1985, p. 247.

⁸ Moein, Mohammad, *op. cit.*, vol. 3, p. 3712.

to take benefit of or to transfer something except in cases banned by law. From the viewpoint of Islamic jurisprudence, any legal dominance is called possession and therefore possession is an attribute, which is used with regard to dominance, such as possession of home etc.⁹

3.2 Characteristics of possession

With regard to the aforementioned definitions and considering laws and regulations, jurists count three basic characteristics for possession:

a. To be Absolute

According to article 30 of the Iranian civil law, every possessor has the right to take any benefit from or to do whatever he wants with his property except in cases banned by law. Therefore, the possessor has an absolute right to do anything with his property¹⁰.

b. To be exclusive

Once the absolute right to do whatever a possessor wishes to his property is respected by others, the result will be exclusive possession. That is to say, not only any possessor has the right to do whatever he wants with his property, he can also prevent others from interfering with his property. Possession is an individual right and protected by law against any termination. Article 30 of the Iranian civil law states that no property can be taken from its possessor except by law. Moreover, any aggression against people's property is punished by the criminal law¹¹.

c. To be eternal

This characteristic is not stated in any article of the civil law, but it should be noted that possession is eternal and is naturally in contradiction with being temporary. The civil law states that possession is not destroyed even by the death of the possessor and is only transferred to others¹².

4. Possession of organs of body

Having presented definition of property and possession, the study goes on with investigating possession of human organs. Once it is proven that human organs are property possessed by the man, this possession can be generalized to blood, and therefore one can sell, donate, or exchange his blood. Since many different views are expressed on the possession of human organ by jurists so far, the study mentions only the major views in the field.

⁹ Jafari Langaroudi, Mohammad Jafar, *Detailed Law terminology*, 2009, volume 2, 4th Edition. Tehran: Ganje danesh publication, p. 599.

¹⁰ Katouzian, Naser, *op. cit.*, 2003, p. 101.

¹¹ *Idem*, p. 107.

¹² *Idem*, p. 108.

5. Reasons of compatibles of being property and possession of organs

1. Possession is a relative context

Some people believe that possession is a relative context. They state that although some have denied possession of human organs as a result of generalizing human body's totality to its organ –that is to say since the human body as a whole, is not a property, its organ are not properties either-, but they have not noted the fact that possession is a relative context and since organ transplant is possible today¹³, therefore today organs and blood might be possessed.

2. Intrinsic possession of organs

A group of jurists believes that the idea of rejecting possession of organs of man has no legal basis, as possession is obvious where something is allocated to someone and is under his control. Although possession of organs or what is produced or reproduced by human body such as blood, seems strange and unfamiliar, in fact, such possession is the most obvious form of possession even in that legal context, as it is a natural intrinsic form of possession. That is why some Islamic jurists have accepted the authenticity of donation agreements for organs while expressing doubt about organ sale contracts¹⁴.

3. Contractual possession of organs

In contrast to jurists who believe organs are intrinsically possessed by man, a group of jurists believes that possession of organs by man is a contractual possession. Since a contractual property depends on establishment of general power and the authentic institute, it seems that this is the case for human blood¹⁵.

4. Human is the immediate reason for survival of organs

Some jurists believe that although human is not the intrinsic possessor of his organ –for he is not the creator of organs-, but he has a possession similar to the intrinsic possession of his organs, as he is the immediate reason for survival of his organs. Such a possession is the origin for contractual possession which in turn legalizes organ sale¹⁶. Confirming the above-mentioned claim, they further state that since human soul is the immediate reason for the survival of body, the body would be destroyed without a soul. Therefore, soul is the reason for existence of body and every reason that causes the existence of something is its possessor too¹⁷.

5. Human possession of his body is a religious possession as human is guardian of his body

Some jurists believe that human possession of his organs is a religious possession. They state that it is not correct to hesitate about possession of the body of human where the religion of Islam gives every human the right to decide about

¹³ Mir Hashemi, Sajad, *Juridical effects organ transplant from died people or coma*, „Journal of idea of Gharib”, no. 5/2006, p. 56.

¹⁴ Idem, p. 85.

¹⁵ Jafari Langaroudi, Mohammad Jafar, *op.cit.*, Vol. 4, p. 3128.

¹⁶ Rahmani, Mohammad, *A Glance at the jurisprudential basis of organ transplant in verdicts of the supreme leader*, „Journal of seminary and research”, spring of 2001, no. 5/2001, p. 69.

¹⁷ Mohseni, Mohammad Asef, "Jurisprudence and natural problems", first edition, Yaran Publication, Qom, no date, p. 214.

his body. Therefore, every human has the right to decide about his organs and it is not correct to decide about people body without their consent¹⁸.

Jurists prove the guardianship of a man on his body, according to the juridical principle of “people are guardian of themselves as well as their properties” which is summarized as what follows:

This principle that is called as the principle of dominance, is among the most important juridical principles which in turn specifies the position of property and possession is Islamic law. The principle states that every possessor has dominance over his property and can do anything with his property and without legal permission, no one can prevent him from what he does with his property. In other word, according to this principle, a possessor is allowed to do any kind of action to his property except where the law prohibits him¹⁹.

The aforementioned juridical principle is based on many reasons, including the following:

- a. The Prophet has more authority over the believers than themselves, Holy Quran, chapter 33, verse no. 6.

Although the aforementioned verse of the holy Quran seeks to prove that the honorable prophet has more authority over the believers compared to themselves, it clearly implies that believers have authority over themselves too. In other words, this holy verse proves that both, the prophet and the believers have authority while prophet’s authority is of priority²⁰.

- b. And among men is he who sells his life to seek the pleasure of God, Holy Quran, chapter 2. Verse no. 207.

This holy verse implies that the soul is in the hand and control of man, for selling is not established until the seller is the guardian of the sold property. Moreover, in this holy verse, it is assumed that man is the possessor of his soul too²¹.

- c. Authentic narrative of Samae

According to this authentic narrative, Imam Sadegh who is of legislative authority among Muslims, stated that God has granted man full control over his affairs except what humiliates him²². This principle clearly states that human is free to do whatever he wants even with regard to his body. The only exception is humiliation as stated above, which has nothing to do with organ transplant. In other words, according to the above-mentioned narrative, man is the possessor of his body and is allowed to donate or sale his organs.

6. Organs are considered as property by the wise

¹⁸ Idem, p. 65

¹⁹ Mohaghegh Damad, Seyed Mostafa, *Jurisprudential principles of civil chapter*, 2008, Islamic sciences publication center, 2008, p. 227.

²⁰ Kharazi, Seyed Mohsen, *Organ Transplant*, „Journal of Ahlul bait Jurisprodence”, 1999, no. 19 & 21, p. 85; Mohseni, Mohammad Asef, op. cit., p. 164.

²¹ Mohseni, Mohammad Asef, op. cit., p. 164

²² Hor Ameli, Mohammad Bin Hasan, *Vasael Alshia*, Qom: Ahlul bait Publication, 1987, vol. 11, p. 424

Accepting the possession of organs by man, a group of Islamic jurists believes that organ sale is legally valid for organs are considered to be properties by the wise and there is no reason against it²³. In other words, the wise state that every man is in control of his affairs and this viewpoint is in fact a legal principle, which permits the donation and sale of organs as these parts of the body, are under the control of the one who donates or sells²⁴.

7. Everything is originally legal

The above-mentioned principle is an important principle in Islamic jurisprudence and law. The principle states that everything, which can take legal and illegal form, is legal until you become sure that it is in illegal form. With accordance to this principle, some have concluded that since there is no reason that can bring us certainty about organ possession being illegal, man is the possessor of his body and contracts of organ sale are valid²⁵.

8. Liberty to ask for atonement instead of nemesis in cases of crime against organs

A group of jurists believes that liberty given to everyone in order to choose whether to forgive the criminal or ask for nemesis or atonement in cases of crime against one's body, clearly notifies the man's right towards his body; as making decisions about what to do with the criminal is up to the possessor of organs. Moreover, the aforementioned right is not a new right established by the crime rather it is the continuation of a previous right of possession of the body of man²⁶.

The above explanations specify the fact that man has the entire right on his body as this is why there is no punishment for a crime committed against one's body with his permission and consent²⁷.

According to article 215 of the Iranian civil law, cases of exchange should be considered as a property and should be of wise profit. Industrial progress makes man superior to the nature so that man can take benefit of all natural elements. What benefits is of value -regardless of the fact that the value is great or little-, and is considered a property. Therefore, one can hardly find a case none-exchangeable for not being a property²⁸.

With regard to the above definitions, body organs are obviously a property because in many cases, they are of such a great value that can save people life or make the continuum of life possible for his which in turn may facilitate his work in society. And this is the point where body organs are of great profit and are included in vital affairs²⁹.

This is why blood sale was illegal previously, but is legal today. The reason

²³ Mohseni, Mohammad Asef, *op. cit.*, 214.

²⁴ Kharazi, Seyed Mohsen, *op. cit.*, p. 85

²⁵ Mohseni, Mohammad Asef, *op. cit.*, p. 214.

²⁶ Idem, p. 165

²⁷ Gazani, Mohammad Ahmad Mostafa, *On human organ transplant in Islamic jurisprudence and law*, Erbil, Salahe Din Publication, 1999, p. 39.

²⁸ Katouzian, Naser, *Preliminary course of civil law for certain agreement*, vol. 1, 13th edition, Ganje danesh library, 2009, p. 43.

²⁹ Kafi Ghomshee, Mostafa, *op. cit.*, p. 38.

is that blood had no legal use these days and was not of wise profit and was exclusively used for drinking which is illegal. However, today the case is different, the use of blood is changed, and therefore blood is a property. Since blood can be transfused and injected into the patient's body with the help of medical facilities in order to save a life, it can be legally sold out. That is for reasons for prohibition of blood are about drinking, which was the sole use of blood³⁰.

6. Conclusion

As made clear so far, the present study tried to provide a legal and Islamic jurisprudential analysis on possession of blood as a property. On the basis of what has been already presented, it is concluded that definitions, elements and conditions of a property are in line with blood being a property as in one hand, blood belongs to a natural person and thank to progress in medicine is easily transfused; moreover, there is no doubt that today blood is about wise profit. On the other hand, although the blood had no wise profit previously, is of wise important legal profit today. Therefore, if one could not consider blood as a property at the past times, today blood is a property and can save man's life through transfusion by the modern medical facilities.

From medicine point of view, blood is retrievable as the transfused blood is retrieved in the donor's body after a while. But this is not the case for organs that are separated from the body. Therefore, as man is possessor of his organs, he is possessor of his blood too. According to the principle of Dominance, any sort of action is permitted for a possessor towards his property; as a result, blood can be donated or sold while there is no reason against it.

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