Criminal Liability for the Transfer and Sale of Human Organs under Iraqi and Saudi Law: A Comparative Study of the Legal Basis and Mechanisms of Criminalization

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HOW TO CITE:
Mohsen Ghadir, Ali Hamoodi Abdul Hadi Al-Sultani (2026), Criminal Liability for the Transfer and Sale of Human Organs under Iraqi and Saudi Law: A Comparative Study of the Legal Basis and Mechanisms of Criminalization International Journal of Special Education, 41(21s), 271 - 283

ABSTRACT:
This research examines the legal basis of criminal liability for the transfer and sale of human organs under Iraqi and Saudi law through a descriptive, analytical, and comparative approach that explains how the constitutional obligation to provide health care interacts with the principle of protecting human dignity in establishing criminal liability. The research shows that Iraqi law is based on a normative hierarchy beginning with Article 31, First and Second, of the Constitution of the Republic of Iraq of 2005, which requires the State to safeguard public health and to regulate and supervise health institutions. It then proceeds to Article 2 of the Iraqi Human Organ Transplantation and Prevention of Trafficking Law No. 11 of 2016, which identifies the regulation of organ transfer and transplantation and the prevention of trafficking as purposes of the Law, in addition to Articles 410 and 411 of Iraqi Penal Code No. 111 of 1969, as amended, which punish intentional assault resulting in death and causing death by negligence. The research further shows that the Saudi system is founded on conditional permissibility, reflected in Article 2 of the Saudi Human Organ Donation Law, which permits donation or a bequest to donate in accordance with the provisions of the Law and in a manner that does not conflict with Islamic Sharia, and Article 5(1) of its Implementing Regulations, which requires organ transplantation procedures to be carried out in licensed health facilities in coordination with the competent center before the procedures are performed. The research concludes that both systems converge in preventing the human body from becoming an object of trafficking, although they differ in their foundational approach: Iraqi law bases liability on constitutional health-care obligations and specific legislative regulation, whereas the Saudi

system bases liability on conditional authorization and regulated institutional implementation. Both systems nevertheless regard valid consent, legal capacity, and respect for human dignity as essential conditions for the lawfulness of donation.

Keywords: criminal liability, organ transfer, organ sale, legal basis, criminalization, punishment.

Introduction

The legal basis of criminal liability for the transfer and sale of human organs under Iraqi and Saudi law rests on a normative structure that is not founded solely on the abstract notion of criminalization. Rather, it arises from the convergence of two fundamental interests: the interest in lawful therapeutic care and the interest in preserving human dignity by preventing the human body from becoming a field of exploitation or trafficking (Al-Zuhayli, 1997, vol. 4, p. 256; Al-Shirbini, 2008, p. 145). The starting point is evident in Article 31, First, of the Constitution of the Republic of Iraq of 2005, under which the State guarantees health care. This provision indicates that the original lawfulness of medical intervention is connected to a therapeutic function intended to preserve the person, treat illness, and protect life and bodily integrity (Constitution of the Republic of Iraq, 2005, Art. 31/First; Al-Sadiq, 2010, p. 89). It is also evident in Article 10 of the Saudi Human Organ Donation Law, which requires respect for the dignity of the donor. This obligation is not merely an ethical limitation; it is a legal rule demonstrating that the human body does not lose its inviolability even within the sphere of lawful donation (Saudi Human Organ Donation Law, Art. 10; Miri, 2016, p. 138). Accordingly, this section analyzes the interaction between these two foundations: the legal duty to provide health care and the legal duty to protect human dignity, and then explains how criminal liability arises whenever conduct departs from its therapeutic purpose or diminishes the human value inherent in the body (Al-Khatib, 2005, p. 160; Ebrahim, 1995, p. 295). In this sense, the inquiry is not into penalties detached from their foundations, but into the basis that makes some forms of organ transfer lawful while rendering others grounds for criminal accountability.

Article 31, First, of the Constitution of the Republic of Iraq of 2005 indicates that health care is not a secondary public service or a service that may be treated according to a purely utilitarian logic; rather, it is a constitutional obligation borne by the State toward the individual (Al-Adawi, 2012, p. 338; Al-Hakim, 1995, vol. 14, p. 320). It follows that every matter relating to the transfer of human organs must be interpreted in light of this original therapeutic purpose, because the lawfulness of a medical act is derived not from its technical feasibility alone, but from its orientation toward achieving the treatment guaranteed by the constitutional provision (Iraqi Civil Code, 1951, Art. 109/2; Al-Zarqa, 1998, vol. 2, p. 674). Analytically, this means that organ transfer conducted within a framework that realizes health care is, in principle, closer to the sphere of permissibility. If, however, it departs from that framework and becomes a means of profit, exploitation, or uncontrolled disposal, it loses the legal basis linking it to the constitutional function of health care (Al-Sunaidi, 2015, p. 220; Tanzilur Rahman, 1980, p. 145).

The corresponding foundation in the Saudi system is more directly personal and human-centered and is embodied in Article 10 of the Saudi Human Organ Donation Law, which requires respect for the dignity of the donor (Saudi Human Organ Donation Law, Art. 10). The significance of this provision lies not only in regulating the stage at which the donor is dealt

with, but also in making human dignity a decisive criterion distinguishing lawful donation from every form of disguised exploitation or unlawful objectification of the body (European Council for Fatwa and Research, 2002; Al-Khatib, 2005, p. 165). Thus, even where donation is inherently humanitarian or therapeutic, it is not legally permissible if it takes place under circumstances that diminish the dignity of the donor or turn the donor's body into an object of bargaining, pressure, or utilitarian use (Ibn Abidin, 1992, vol. 5, p. 400; Al-Sistani, 2020, p. 48).

Reading Article 31, First, of the Constitution of the Republic of Iraq of 2005 together with Article 10 of the Saudi Human Organ Donation Law produces a composite legal conception of criminal liability in this field. Under this conception, the human body may be interfered with only where the interference is genuinely connected to therapeutic care and is simultaneously accompanied by respect for human dignity (Constitution of the Republic of Iraq, 2005, Art. 31/First; Saudi Human Organ Donation Law, Art. 10; Muslim World League, Islamic Fiqh Council, Resolution No. 1/8, 1985). This dual foundation demonstrates that the legal basis of criminal liability does not rest on a single isolated principle, but on the conjunction of the social function of medicine and the human value of the person (Al-Zuhayli, 1997, vol. 4, p. 280; Islamic Fiqh Academy, OIC, Resolution No. 1/4, 1988). The following sections analyze these issues using a descriptive, analytical, and comparative methodology applied to Iraqi law and the Saudi legal system in order to reach a precise characterization of the legal basis of criminal liability for the transfer and sale of human organs.

Section One: The Legal Basis under Iraqi Law

Under Iraqi law, the legal basis of criminal liability for the transfer and sale of human organs is defined by the convergence of two complementary levels of protection. The first is a general constitutional level that places public health and the regulation and supervision of health institutions within the State's direct obligations. The second is a specific legislative level that directs this general obligation toward the field of human organ transplantation and regulates it so as to prevent its deviation into trafficking and exploitation (Constitution of the Republic of Iraq, 2005, Art. 31/Second; Human Organ Transplantation and Prevention of Trafficking Law, 2016, Art. 2; Al-Sadiq, 2010, p. 92). Article 31, Second, of the Constitution of the Republic of Iraq of 2005 reflects the first level by requiring the State to safeguard public health and to regulate and supervise health institutions. This provision establishes more than a political or administrative objective; it creates a binding rule that places public health within a framework of organized protection and subjects health institutions and medical activity to legislative regulation, control, and supervision (Constitution of the Republic of Iraq, 2005, Art. 31/Second; Al-Zalmi, 2000, p. 21). Article 2 of Human Organ Transplantation and Prevention of Trafficking Law No. 11 of 2016 reflects the second level by identifying the regulation of transfer and transplantation and the prevention of trafficking as purposes of the Law. Protection thereby moves from constitutional generality to legislative specificity and from protecting health as a public interest to protecting the human body in one of the most sensitive areas of medical practice (Human Organ Transplantation and Prevention of Trafficking Law, 2016, Art. 2; Al-Kubaisi, 1972, p. 127).

Reading Article 31, Second, of the Constitution of the Republic of Iraq of 2005 together with Article 2 of Human Organ Transplantation and Prevention of Trafficking Law No. 11 of 2016 demonstrates that the Iraqi legal basis rests on a precise normative hierarchy. It begins with the State's obligation toward public health and culminates in the independent regulation of one of its most sensitive fields (Al-Dulaimi, 1998, p. 103; Al-Shirbini, 2008, p. 130). This hierarchy has a significant effect on the nature of criminal liability for the transfer and sale of human organs. The constitutional foundation prevents the medical field from being understood as an unrestricted sphere in which institutions and

individuals may act as they please, because the State is constitutionally charged with regulating and supervising health institutions (Al-Zarkani, 2012, p. 144). The specific legislative foundation, for its part, prevents organ transfer from being regarded merely as therapeutic activity left to the discretion of practitioners, because the Law expressly identifies its purpose as regulating transfer and transplantation and preventing trafficking (Human Organ Transplantation and Prevention of Trafficking Law, 2016, Art. 2; Kashkoul and Al-Saadi, n.d., p. 111).

Subsection One: The Constitutional Basis for Protecting the Human Body and Dignity in Iraq

The constitutional protection of the human body and human dignity in Iraq rests on an integrated normative framework that treats the human body as inherently protected and permits interference with it only within the limits prescribed by law and in a manner consistent with the human value inherent in the person (Constitution of the Republic of Iraq, 2005, Art. 15; Art. 37/First/A; Al-Hakim, 1995, vol. 14, p. 325). This framework is clearly reflected in Article 15 of the Constitution of the Republic of Iraq of 2005, which guarantees every individual the rights to life, security, and liberty. The provision does not merely proclaim separate rights; rather, it establishes an organic connection among them, making life, security, and liberty interdependent dimensions of legal human existence (Constitution of the Republic of Iraq, 2005, Art. 15; Al-Zuhayli, 1997, vol. 4, p. 285). Life is therefore protected not merely in its biological sense, but as a secure and free human existence (Al-Khatib, 2005, p. 168). This protection is reinforced by Article 37, First/A, of the Constitution of the Republic of Iraq of 2005, which provides that human liberty and dignity are protected. The provision elevates dignity to a governing constitutional principle applicable to all forms of dealing with the human body (Constitution of the Republic of Iraq, 2005, Art. 37/First/A; Al-Sistani, 2020, p. 48).

The combined effect of Articles 15 and 37, First/A, of the Constitution of the Republic of Iraq of 2005 creates an integrated constitutional conception of the human body: the body is neither something external to the person nor merely a material vessel of life, but one of the dimensions through which life, security, liberty, and dignity are embodied (Constitution of the Republic of Iraq, 2005, Arts. 15 and 37/First/A; Miri, 2016, p. 140). This conception has a significant effect on determining the boundaries between permissible and impermissible conduct in both the medical and criminal fields. While Article 15 protects human existence from the perspective of life, security, and liberty, Article 37, First/A, protects it from the perspective of liberty and dignity, thereby integrating substantive protection with value-based protection (Al-Sunaidi, 2015, p. 225; Ebrahim, 1995, p. 298).

Subsection Two: The Basis of Criminalization under the Iraqi Penal Code

Under the Iraqi Penal Code, the criminalization of death resulting from removal of an organ or an unlawful intervention in the human body rests on general rules that perform a decisive function. They demonstrate that criminal protection of the body is not confined to specific provisions where a detailed penal provision is absent or where the penal characterization must be grounded in the general structure of criminalization (Iraqi Penal Code, 1969, Arts. 410 and 411; Al-Zalmi, 2000, p. 132). In this context, Article 410 of Iraqi Penal Code No. 111 of 1969, as amended, is of central importance because it punishes an intentional assault that results in death without an intent to kill (Iraqi Penal Code, 1969, Art. 410; Al-Kubaisi, 1972, p. 130). Article 411 of the same Code is of comparable importance because it punishes causing death by negligence, recklessness, inattention, lack of precaution, or violation of laws, regulations, or orders (Iraqi Penal Code, 1969, Art. 411; Al-Shirbini, 2008, p. 150).

The scope of Article 410 of Iraqi Penal Code No. 111 of 1969, as amended, is defined by two interrelated elements: first, an intentional assault on the body of the victim; and second, the fact that the assault resulted in death in the absence of an intent to kill (Iraqi Penal Code, 1969, Art. 410; Ibn Abidin, 1992, vol. 5, p. 400). This legislative structure is highly significant in cases of unlawful organ removal or intervention, because in some circumstances the perpetrator may intentionally commit an act that interferes with the body, such as intentionally removing an organ or carrying out an intervention lacking legal authorization, without having formed an intent to kill the victim (Al-Adawi, 2012, p. 355). In such a case, it would be incorrect to exclude intent merely because the purpose was not to end life, since Article 410 specifically addresses the distinction between intent to assault and intent to kill (Iraqi Penal Code, 1969, Art. 410; Al-Zuhayli, 1997, vol. 4, p. 288).

Article 411 of Iraqi Penal Code No. 111 of 1969, as amended, establishes a different basis of criminalization founded on unintentional fault (Iraqi Penal Code, 1969, Art. 411; Al-Hakim, 1995, vol. 14, p. 330). The provision punishes causing death through negligence, recklessness, inattention, lack of precaution, or violation of laws, regulations, or orders. These forms show that the legislature does not require an intentional aggressive interference with the body in order to establish liability for death; it is sufficient that death results from a breach of duties of care, attention, and compliance with legal and regulatory requirements (Al-Khatib, 2005, p. 170). The importance of this provision is especially apparent in medical or quasi-medical interventions in which direct aggressive intent is not established, but where it is established that the actor performed or participated in the removal or intervention in a manner involving recklessness, negligence, or violation of prescribed rules (Miri, 2016, p. 142; Ebrahim, 1995, p. 296).

Subsection Three: Elements of the Offence under Iraqi Law

The elements of the offence under Iraqi law in the field of human organ transfer are examined by distinguishing between a medical act that gives rise to lawfulness and an act that loses that status and thereby becomes a basis for criminal liability (Human Organ Transplantation and Prevention of Trafficking Law, 2016, Art. 4; Iraqi Public Health Law, 1981, Art. 91; Al-Sadiq, 2010, p. 110). This field is not governed solely by the logic of conventional bodily assault, because the act may appear therapeutic or humanitarian on its face. Its legal characterization, however, depends not on outward appearance but on whether the conditions established by the legislature as the basis for lawful interference with the body are satisfied (Al-Shirbini, 2008, p. 155). In this context, Article 4 of Human Organ Transplantation and Prevention of Trafficking Law No. 11 of 2016 provides that every person with full legal capacity may donate a human organ or tissue from his or her body for transplantation into another person. The provision demonstrates that lawfulness does not arise merely from a desire to donate, but is initially linked to the necessary legal attribute of full capacity (Human Organ Transplantation and Prevention of Trafficking Law, 2016, Art. 4; Al-Kubaisi, 1972, p. 127). Article 91 of Iraqi Public Health Law No. 89 of 1981, as amended, further provides that surgery may not be performed without the consent of the patient, or of the patient's relatives where capacity or consciousness is absent, except in an emergency. This completes the legal structure under which valid consent is a necessary element for moving an intervention from the sphere of prohibition to the sphere of permissibility (Iraqi Public Health Law, 1981, Art. 91; Al-Adawi, 2012, p. 358).

The actus reus is connected to this framework because the act constituting the offence is not limited to removal or transplantation in their technical sense, but encompasses every intervention in the body undertaken in the absence of legally recognized capacity or the consent required by law (Human Organ Transplantation and Prevention of Trafficking

Law, 2016, Art. 4; Iraqi Public Health Law, 1981, Art. 91; Al-Zalmi, 2000, p. 135). Article 4 of Human Organ Transplantation and Prevention of Trafficking Law No. 11 of 2016 permits donation by a person with full legal capacity; conversely, an intervention based on a donation made by a person lacking that status is deprived of its legal basis (Human Organ Transplantation and Prevention of Trafficking Law, 2016, Art. 4; Al-Dulaimi, 1998, p. 103). Likewise, Article 91 of Iraqi Public Health Law No. 89 of 1981, as amended, prohibits surgical intervention without the consent of the patient, or of the patient's relatives where capacity or consciousness is absent, except in an emergency. Accordingly, merely commencing a surgical procedure in the absence of such consent constitutes a form of unlawful conduct (Iraqi Public Health Law, 1981, Art. 91; Al-Shirbini, 2008, p. 158).

The mental element in this field is reflected in the actor's position toward the two conditions on which Article 4 of Human Organ Transplantation and Prevention of Trafficking Law No. 11 of 2016 and Article 91 of Iraqi Public Health Law No. 89 of 1981, as amended, base lawfulness (Human Organ Transplantation and Prevention of Trafficking Law, 2016, Art. 4; Iraqi Public Health Law, 1981, Art. 91; Miri, 2016, p. 145). If the perpetrator removes an organ or proceeds with an intervention knowing that the person lacks full legal capacity, knowing that the patient has not consented, or knowing that the patient's relatives have not consented where capacity or consciousness is absent, the actor's will is directed toward conduct that is unlawful in itself. The actor knows that the condition making the conduct permissible is absent and nevertheless proceeds (Al-Adawi, 2012, p. 360; Al-Hakim, 1995, vol. 14, p. 332).

Subsection Four: Criminal Penalties under Iraqi Legislation

The criminal penalties prescribed under Iraqi legislation for the transfer and sale of human organs can be understood by distinguishing between two types of sanction that converge in protecting the human body but differ in their basis. The first attaches to the act itself when it takes the form of human trafficking; the second attaches to the status of the actor when the person intervenes in the medical field without legal registration or authorization (Iraqi Anti-Human Trafficking Law, 2012, Art. 5; Iraqi Medical Association Law, 1984, Art. 33; Al-Zarkani, 2012, p. 148). Article 5 of Iraqi Anti-Human Trafficking Law No. 28 of 2012 reflects the first type by prescribing the principal penalty for human trafficking and aggravating it where the offence is committed through coercion, threat, fraud, deception, abuse of authority, or the provision of consideration to obtain consent. This demonstrates that the legislature did not merely criminalize trafficking as an abstract act, but linked the severity of the penalty to the means by which human will and dignity were violated (Iraqi Anti-Human Trafficking Law, 2012, Art. 5; Al-Kubaisi, 1972, p. 132). Article 33 of Iraqi Medical Association Law No. 81 of 1984, as amended, reflects the second type by prescribing imprisonment, a fine, or both for a person who practices or attempts to practice medicine, or assumes a status authorizing such practice, without legal registration or authorization. The provision thus treats the actor's professional status and the lawfulness of that professional position as an independent element of the punitive structure (Iraqi Medical Association Law, 1984, Art. 33; Al-Shirbini, 2008, p. 160).

The aggravated penalty under Article 5 of Iraqi Anti-Human Trafficking Law No. 28 of 2012 indicates that Iraqi legislation distinguishes between the mere occurrence of trafficking and trafficking committed through means that reveal a higher degree of criminal dangerousness (Iraqi Anti-Human Trafficking Law, 2012, Art. 5; Al-Zalmi, 2000, p. 138). Coercion and threats violate human freedom by impairing the ability to choose; fraud and deception impair the will by undermining sound knowledge and understanding; abuse of authority disturbs the balance between perpetrator and victim and turns influence into a means of violating bodily inviolability; and providing consideration in order to obtain consent demonstrates that the

apparent consent has replaced the logic of dignity with the logic of exchange (Al-Adawi, 2012, p. 362; Ebrahim, 1995, p. 300).

Section Two: The Legal Basis of Criminal Liability for the Transfer and Sale of Human Organs under Saudi Law

The legal basis of criminal liability for the transfer and sale of human organs under Saudi law is defined by a normative structure founded on two interrelated ideas: conditional permissibility of donation or a bequest to donate, and regulated institutional implementation that permits activity in this field only within licensed health facilities and under prior supervision and coordination (Saudi Human Organ Donation Law, Art. 2; Implementing Regulations of the Saudi Human Organ Donation Law, Art. 5/1; Miri, 2016, p. 148). Article 2 of the Saudi Human Organ Donation Law reflects the first component of this structure by permitting donation or a bequest to donate in accordance with the provisions of the Law and in a manner that does not conflict with Islamic Sharia. The provision shows that the starting point is not unrestricted individual authority to dispose of one's body, but limited permission subject to two conditions: compliance with the Law and non-conflict with Islamic Sharia (Saudi Human Organ Donation Law, Art. 2; Al-Zuhayli, 1997, vol. 4, p. 290). The second component appears in Article 5(1) of the Implementing Regulations, which requires organ transplantation procedures to be conducted in licensed health facilities in coordination with the competent center before the procedures are performed. Lawfulness in this field therefore extends beyond individual will or therapeutic purpose to the institutional and procedural environment in which the act occurs (Implementing Regulations of the Saudi Human Organ Donation Law, Art. 5/1; Al-Sheikhli, 1981, p. 208).

Article 2 of the Saudi Human Organ Donation Law indicates that the Saudi legislature has adopted a model of conditional lawfulness rather than absolute prohibition or unrestricted permissibility (Saudi Human Organ Donation Law, Art. 2; Ibn Abidin, 1992, vol. 5, p. 402). The permission contained in the provision does not extend to the unrestricted disposal of human organs; it is confined to donation or a bequest to donate. This legislative choice demonstrates an intention to restrict lawful conduct to gratuitous humanitarian action linked to a therapeutic purpose rather than exchange or financial benefit (Al-Sunaidi, 2015, p. 228; European Council for Fatwa and Research, 2002). The permission is also not expressed in absolute terms; it is expressly conditioned on compliance with the Law and non-conflict with Islamic Sharia. This phrase has foundational significance because it makes both the Law and Sharia reference points for determining whether conduct falls within or outside the sphere of permissibility (Saudi Human Organ Donation Law, Art. 2; Al-Sistani, 2020, p. 50).

This foundation is complemented by Article 5(1) of the Implementing Regulations, which moves lawfulness from the level of principle to the level of implementation (Implementing Regulations of the Saudi Human Organ Donation Law, Art. 5/1; Al-Khatib, 2005, p. 172). The provision requires organ transplantation procedures to be performed in licensed health facilities in coordination with the competent center before the procedures are carried out. This demonstrates that Saudi law does not regard the validity of the donation or bequest in the abstract as sufficient; the procedure itself must take place within a defined, known, and supervised institutional framework (Al-Mashhadani, 1998, p. 116). The significance of this condition is that lawfulness does not arise in a vacuum. It requires an institution legally licensed for the purpose and a prior coordination relationship with the competent center, thereby preventing organ transplantation from becoming a private, unsupervised activity or a practice conducted in facilities lacking the required legal status (Al-Kubaisi, 1972, p. 134).

Subsection One: The Statutory Basis in the Kingdom of Saudi Arabia

The statutory basis governing human organ transfer in the Kingdom of Saudi Arabia rests on a precise conception that does not begin with a general permission to dispose of the body. Instead, it provides a restricted exceptional authorization and bases lawfulness on two interrelated controls: the validity of authorization as to form and issuance, and the suitability of the subject matter of the donation in terms of its effect on the donor's body and ordinary life (Saudi Human Organ Donation Law, Arts. 2 and 8; Miri, 2016, p. 148). The first control appears in Article 2 of the Saudi Human Organ Donation Law, which permits donation or a bequest to donate in written and authenticated form. The provision does not permit the disposal of organs on the basis of spontaneous or implied will; rather, it makes writing and authentication necessary conditions for moving the will from the internal psychological sphere into the legally effective statutory sphere (Saudi Human Organ Donation Law, Art. 2; Al-Zuhayli, 1997, vol. 4, p. 292). The second control is reflected in Article 8, which prohibits donation where the organ is necessary for the donor's life, where donation would lead to death, disable the function of a whole organ, prevent the donor from carrying out ordinary affairs of life, or where the living donor lacks or has diminished legal capacity (Saudi Human Organ Donation Law, Art. 8; Ibn Abidin, 1992, vol. 5, p. 404).

Article 2 of the Saudi Human Organ Donation Law demonstrates that writing and authentication are not merely regulatory procedures ancillary to the process; they form part of the statutory foundation on which lawfulness is based from the outset (Saudi Human Organ Donation Law, Art. 2; Al-Shirbini, 2008, p. 162). A donation of a human organ or a bequest to donate therefore produces legal effect only if it is made in written and authenticated form. Mere intention is insufficient, and oral consent or consent inferred by implication does not attain the level recognized by the Law (Al-Adawi, 2012, p. 364). Analytically, this choice indicates that the Saudi legislature sought to provide the body with the greatest possible safeguards before permitting interference with it: writing clarifies the content of the will, while authentication provides a measure of verification and certainty and prevents manipulation, false claims, impersonation, or concealed coercion (Al-Sunaidi, 2015, p. 230; Ebrahim, 1995, p. 298).

The statutory framework moves from regulating the will to regulating the subject matter of donation and its consequences through Article 8 of the Saudi Human Organ Donation Law. This provision makes clear that the authorization established by Article 2 is not open-ended but is limited by strict substantive restrictions related to the donor's own safety (Saudi Human Organ Donation Law, Art. 8; Al-Khatib, 2005, p. 175). Donation is prohibited where the organ is necessary for the donor's life. The Law thus does not permit donation to negate the individual's right to continued life, nor does it accept an apparent freedom to dispose of the body where that freedom would in practice result in the loss of life (Al-Hakim, 1995, vol. 14, p. 335). Donation is likewise prohibited where it would lead to the donor's death, a restriction that complements the preceding rule and confirms that the donor's survival and vital integrity constitute the upper limit that may not be exceeded (Al-Sistani, 2020, p. 49).

Subsection Two: The Basis of Criminalization in the Saudi System and Related Regulations

The basis of criminalization in the Saudi system and related regulations concerning the transfer and sale of human organs rests on a precise legal duality combining a general prohibition of all forms of human exploitation with specific implementing regulation that confines lawful transfer to designated statutory channels (Saudi Anti-Trafficking in Persons Law, Art. 2; Implementing Regulations of the Saudi Human Organ Donation Law, Art. 3; Miri, 2016, p. 150). The first aspect appears in Article 2 of the Saudi Anti-Trafficking in Persons Law, which prohibits trafficking in any person in any form, including through coercion, threat, fraud, deception, abduction, exploitation of office or

influence, abuse of authority, or exploitation of vulnerability (Saudi Anti-Trafficking in Persons Law, Art. 2; Al-Zuhayli, 1997, vol. 4, p. 295). The second aspect is reflected in Article 3 of the Implementing Regulations of the Saudi Human Organ Donation Law, which regulates the transfer of organs from a deceased person in accordance with the implementing controls (Implementing Regulations of the Saudi Human Organ Donation Law, Art. 3; Al-Sheikhli, 1981, p. 210).

Article 2 of the Saudi Anti-Trafficking in Persons Law demonstrates that the legislature has based criminalization on a broad conception of exploitation rather than a narrow conception limited to an apparent financial consideration or a completed sale (Saudi Anti-Trafficking in Persons Law, Art. 2; Al-Kubaisi, 1972, p. 136). By prohibiting trafficking in any person in any form and then enumerating coercion, threat, fraud, deception, abduction, exploitation of office or influence, abuse of authority, and exploitation of vulnerability, the provision establishes that the offence is defined not only by its ultimate result but also by the behavioral structure that violates human freedom and takes advantage of vulnerability, ignorance, or dependency (Al-Adawi, 2012, p. 366; Ebrahim, 1995, p. 300).

This general prohibition is matched by a precisely defined lawful pathway set out in Article 3 of the Implementing Regulations of the Saudi Human Organ Donation Law, which regulates organ transfer from a deceased person in accordance with the implementing controls (Implementing Regulations of the Saudi Human Organ Donation Law, Art. 3; Al-Shirbini, 2008, p. 165). The importance of this provision lies not only in identifying one instance of permissible transfer, but in delineating the channel through which the act remains within the sphere of lawfulness (Al-Sunaidi, 2015, p. 232). The implementing regulator therefore does not give actors unrestricted discretion in dealing with the organs of a deceased person and does not regard a therapeutic purpose or presumed consent as sufficient; rather, it subjects transfer to prior and specified implementing controls (Miri, 2016, p. 152; Tanzilur Rahman, 1980, p. 149).

Subsection Three: Elements of the Offence under Saudi Law

The elements of the offence under Saudi law in the field of human organ transfer are examined by distinguishing between a medical act that is lawful when based on valid consent and preceded by statutory verification procedures, and an act that loses that legal basis and thereby becomes a ground for criminal liability (Saudi Law of Practicing Healthcare Professions, Art. 19; Saudi Human Organ Donation Law, Art. 5; Al-Zuhayli, 1997, vol. 4, p. 298). Interference with the body is not criminalized in the abstract, because medical practice may originally require removal or transfer for a legitimate therapeutic purpose. That purpose alone, however, is insufficient to confer lawfulness unless it is accompanied by the conditions that the Law requires before interference with the body (Al-Khatib, 2005, p. 178). Article 19 of the Saudi Law of Practicing Healthcare Professions provides that no medical procedure may be performed on a patient without the patient's consent or the approval of the patient's representative or guardian where the patient's own will is not legally recognized. Valid consent is thus made a direct basis for the lawfulness of medical intervention (Saudi Law of Practicing Healthcare Professions, Art. 19; Al-Shirbini, 2008, p. 168).

The statutory element connected with the integrity of prior verification of donation follows. It is clearly reflected in Article 5 of the Saudi Human Organ Donation Law, which requires examination of the donor and verification that no circumstance affects the validity of consent (Saudi Human Organ Donation Law, Art. 5; Al-Adawi, 2012, p. 368). This provision demonstrates that the consent recognized by Article 19 of the Saudi Law of Practicing Healthcare Professions is not satisfied by its mere outward existence; its validity must be verified through a prior examination showing that the consent proceeds from a sound will

untainted by a circumstance that invalidates or weakens its effect (Al-Sunaidi, 2015, p. 235). Accordingly, the offence may arise not only where consent is completely absent, but also where consent exists in formal appearance while the actor neglects the examination, fails adequately to verify its validity, or proceeds with removal or transfer despite a circumstance affecting the validity of that consent (Al-Hakim, 1995, vol. 14, p. 338).

The mental element in this field is formed by the actor's position toward consent and the statutory verification procedures (Saudi Law of Practicing Healthcare Professions, Art. 19; Saudi Human Organ Donation Law, Art. 5; Miri, 2016, p. 155). If the actor undertakes a medical procedure knowing that the patient has not consented, or knowing that no approval has been given by the patient's representative or guardian where the patient's own will is not legally recognized, the actor's will is directed toward conduct that is unlawful in itself because Article 19 makes such consent or approval a necessary condition (Saudi Law of Practicing Healthcare Professions, Art. 19; Al-Zuhayli, 1997, vol. 4, p. 300). This element is likewise established where the actor proceeds with removal or transfer without conducting the examination required by Article 5 of the Saudi Human Organ Donation Law, or without verifying the absence of any circumstance affecting the validity of consent, because such conduct reveals conscious disregard of what the Law requires before interference with the body (Saudi Human Organ Donation Law, Art. 5; Al-Sheikhli, 1981, p. 214).

Subsection Four: Criminal Penalties under the Saudi System

The criminal penalties prescribed under the Saudi system for the transfer and sale of human organs are structured in two parts. The first concerns principal penalties imposed on conduct constituting trafficking in persons where it involves exploitation or unlawful use of a human being. The second concerns supplementary statutory or professional penalties imposed on those who violate rules governing health practice or exceed the applicable controls (Saudi Anti-Trafficking in Persons Law, Art. 4; Saudi Law of Practicing Healthcare Professions, Art. 29; Al-Kubaisi, 1972, p. 138). The first part appears in Article 4 of the Saudi Anti-Trafficking in Persons Law, which aggravates penalties in specified circumstances, including where the offence is committed by an organized criminal group or against a woman or a person with special needs. This demonstrates that the legislature does not merely criminalize the act in itself; it also considers the circumstances surrounding it, the person against whom it was committed, and whether those circumstances increase its gravity and warrant a more severe penalty (Saudi Anti-Trafficking in Persons Law, Art. 4; Al-Adawi, 2012, p. 370). The second part appears in Article 29 of the Saudi Law of Practicing Healthcare Professions, which prescribes a fine for violations of the statutory provisions referenced therein. This indicates that the legislature did not limit its response to the most serious form of the offence, but also surrounded the health sector with supplementary sanctions intended to regulate professional and institutional conduct and prevent the creation of an environment that facilitates violations or conceals them (Saudi Law of Practicing Healthcare Professions, Art. 29; Al-Shirbini, 2008, p. 170).

Article 4 of the Saudi Anti-Trafficking in Persons Law shows that aggravated punishment is not based on a formal criterion; rather, it reflects a legislative assessment of increased criminal gravity in circumstances that make the violation more dangerous to both the individual and society (Saudi Anti-Trafficking in Persons Law, Art. 4; Al-Sunaidi, 2015, p. 238). By making commission of the offence by an organized criminal group a ground for aggravation, the provision recognizes that the danger is not confined to an isolated individual act, but increases when exploitation becomes an organized activity possessing a collective structure and the capacity for continuity, concealment, and expansion (Al-Zuhayli, 1997, vol. 4, p. 302; European Council for Fatwa and Research, 2002).

The aggravation under Article 4 of the Saudi Anti-Trafficking in Persons Law also extends to offences committed against a woman or a person with special needs. This approach demonstrates that Saudi criminal policy in this area considers not only the nature of the act but also the status of the victim and the degree to which the offence exploits human vulnerability (Saudi Anti-Trafficking in Persons Law, Art. 4; Miri, 2016, p. 158). In many contexts, women may be more exposed to pressure, coercion, or exploitation associated with social, economic, or family need, while persons with special needs may be in circumstances that make them more susceptible to influence by others, less able fully to defend themselves, or less able to understand all the consequences of acts committed against them (Al-Adawi, 2012, p. 372; Al-Khatib, 2005, p. 180).

Conclusion

This comparative analytical examination of the legal basis of criminal liability for the transfer and sale of human organs under Iraqi and Saudi law shows clearly that both systems converge on the ultimate objective of protecting the human body from becoming an object of trafficking or exploitation, while differing in their foundational approach and normative structure.

First: Iraqi law is based on a normative hierarchy beginning with Article 31, First and Second, of the Constitution of the Republic of Iraq of 2005, which requires the State to safeguard public health and to regulate and supervise health institutions. It then proceeds to Article 2 of Human Organ Transplantation and Prevention of Trafficking Law No. 11 of 2016, which identifies the regulation of organ transfer and transplantation and the prevention of trafficking as purposes of the Law, in addition to Articles 410 and 411 of Iraqi Penal Code No. 111 of 1969, as amended, which punish intentional assault resulting in death and causing death by negligence. This hierarchy gives the Iraqi legal basis an integrated character combining constitutional, legislative, and penal protection.

Second: The Saudi system is based on conditional permissibility, reflected in Article 2 of the Saudi Human Organ Donation Law, which permits donation or a bequest to donate in accordance with the provisions of the Law and in a manner that does not conflict with Islamic Sharia; Article 5(1) of the Implementing Regulations, which requires organ transplantation procedures to be conducted in licensed health facilities in coordination with the competent center before the procedures are performed; and Article 8 of the Law, which prohibits donation where the organ is necessary for the donor's life, where donation would lead to death, or where it would disable the function of a whole organ. This structure gives the Saudi statutory basis a precise preventive character that operates before the act occurs.

Third: Both systems regard valid consent, legal capacity, and respect for human dignity as essential conditions for the lawfulness of donation. They likewise criminalize all forms of exploitation and trafficking that fall outside these controls, while differing in their means: Iraqi law relies on specific legislative regulation and general criminal penalties, whereas the Saudi system relies on conditional authorization and regulated institutional implementation, together with aggravated principal penalties for trafficking in persons and statutory sanctions for professional violations.

Recommendations

Iraqi legislative recommendation: A specific law should be enacted to regulate the procedural and substantive details of human organ transfer in Iraq, complementing the existing constitutional and statutory provisions, clearly defining the conditions for donation, mechanisms of supervision, and appropriate penalties for every form of violation, and ensuring consistency with Islamic Sharia and the requirements of public order.

Saudi regulatory recommendation: The Implementing Regulations of the Saudi Human Organ Donation Law should be further developed to include more detailed oversight mechanisms, define precisely the responsibilities of the competent center and health facilities, establish objective standards for prior

coordination, ensure transparency in the allocation of organs, and prevent any infiltration of unlawful practices.

Comparative recommendation: Broader comparative studies should be conducted between Iraqi law, the Saudi legal system, and the legal systems of other countries in order to benefit from successful experiences in combating human organ trafficking and to develop criminal policies in both countries in a manner responsive to contemporary medical and legal developments.

Judicial recommendation: Judges in Iraq and Saudi Arabia should receive training on the handling of cases involving the transfer and sale of human organs and be provided with the necessary jurisprudential and legal authorities and references to ensure fair adjudication of these emerging cases and the protection of the rights of victims and society.

Awareness recommendation: Awareness campaigns should be launched in Iraq and Saudi Arabia targeting physicians, intermediaries, and members of the public in order to explain the legal and Sharia rules governing organ transfer, clarify the dangers of organ trafficking, and promote a culture of lawful and humanitarian donation.

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