

Non – based life in jurisprudence and law the Islamic Republic of Iran

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Abstract: Two categories, the life and death always parade against human and human essentially unify and along with the life and the death. some experts recount type and or processes for the life and the death that the life is divided based and the life problem naturally is introduced in different juridical subjects such as heritage, will, punishment and slaughter, that is explained them in respect to non – based life is and death. In recent year, the brain death is shown itself as new subject on our society and question are introduced about its verdicts such as heritage, atonement, force and in specific the great of the brain death patient organs to other patients. In this paper, we briefly will engage some juridical subjects in area non – based life and also will try to study braid death conformity with each life state its clear all definitions and words related to these cases will set and will argue about them.

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1. Introduction

The death and the life are serious categories for human from different ways, jurisprudence and low also consider seriously this topic. Because different law and jurisprudence effects related human's death and life, therefor likely differences and difficult solution created in one side between whole society and in other side government and society members in this field cause to consult jurists and lawyers. Jurisprudence and in following it, Iran laws considered three state of death and life.

- 1) Based life (lasting) that expressional real life and certain life also can name it.
- 2) Lack of life (certain death)
- 3) A state between based life and lack of life that jurists name it, non – based life.

Literal argument

Some believe that the death and the life are contradictory means it's possible neither their community nor height and of course other some believed and its possible one has state between the death and the life.

Singles know the lifeinclined means atrophy and growth strength in plants and animals and susceptible faculty in creatures [1] and the death is introduce means decline of this faculty. In Majme Albahrain, life is defined motion and the death as slack (al-Hayat Harakate Kama an Almot Sokon).

Since non – based life among these three state has certain features and great complexity and interpreted is median between conventional usual life (usual life) and certain death (real), therefore juridical problems and verdicts related to peoples who placed in this state (non – based life) undoubtedly are thought able why in one side can't suppose that one is alive in this state and in other side deaths verdicts completely can't perform and or deduct on him/her.

As result general and accurate study of subject (non – based life) can guide us in every way and specified one situation and juridical problems related him/her in this medium state.

A – subject importance: non based life subject is important for seems in a point of view to set between lasting life and death but in other point of view is identical death and in third point of view is introduced as one of the life (life time) kinds and as a result scrutinized and accurate study will help us than find out real concept and also non – based life real place.

B –Question

In this research is introduce many important questions:

- 1) What is difference among non – based life and based life and death?
- 2) Is braid death as non – based life?
- 3) In juridical problems about non – based life related to braid death?

C – Hypothesizes

It seems that a few hypothesis is arguable related to non – based life.

1) Non – based life is itself a kind of life that has its specific features and conditions but there isn't a exact definition about it means jurists haven't consensus on its criterions.

2) Braindeath is conformity able by jurist's definitions about human non – based life. But these definitions are conformity able by maturity.

3) Identifying based life and brainsituation undertakes certain convention (medicine experts) for reason conformity with death or life states.

D – Keywords: death (certain relative – biologic, brain) – life (based, non – based) – juridical subject.

Juridical argument.

Majme log hat defined the death and the life as: the life is the spirit rebellion the body and is two types, based life in that the spirit deployed in body and non – based life that mobile spirit nature has immediately after slaughter and slaughtered creature has immediately after slaughter and before the complete exit of the spirit from one's body.

There for, concept << life >> is divided two types in jurist's interpretations: based life and non – based life.

Based life is a that has stability and durability, unlike non – based life that different criterion and definitions is state them and we will study them in this paper.

Due to the life division from point of view jurists, human and animal life has three states or has based life and is alive. Or has non – based life and or die. All debates and studied are about second form (non – based life) that if join to alive, alive verdicts belong to it and join to dead will have the dead verdicts, in this case most jurists, non-based life join to the death and some jurists cases know it join alive and carry its effects on it.

First we should study non –based life nature and then death and observe there is what criterions to identify, them will study two underling point of view and polymaths views in this field. Jurists note non – based life in topics related to slaughtering embryo and crime on one who is lusting and in each case state different criterion to identify based life from non – based life about human and embryo and animal that will study them:

a) Non – based life criterion in embryo

1) Newborn weeping (Asthlal) absence [3]
2) A motion has like slaughtered and dead motion [4].

3) sheikh Tosi also standardize to remain alive less than one two days and remark about a embryo who is aborted before time due to beat embryo had one two days after abortion and after that die due to a beat, one who hit is murderer.

b) Non – based life in animal

Some non – based life symptoms is stated in animal refinement dispute that its possible is whole criterion to identify non – based life in human and animal. Every jurists knows one or a few criterion of following criterions, non – based life criterion:

lack of eye and breathe motion and feet fast motion [6], remain alive less than one day [1] or less than them half day [8], luck of ((anxiety)) and lack of eye and breath motion and don't shake hand and foot [9], cut its throat and or split its heart and or belly [10].

Jurists didn't state a reason for above criterions [11] because, owner Kashf Allesam said: we don't

find any document for these cases and decedent Majlesi in Bahar Alanvar bid: apparently these (the life placement criterions in refinement) hold from Sunni and there isn't any effect in news. [12]

b) Non – based life in human

c) Juris remarked symptoms for presence non – based life in humans that some of them is explained as following: lack of speech and motion and optional comprehension [13], lack of eat and drink and lack of speaking [14], lack of vigor[15].

d) Some other jurists also standardize custom in non – based life [16]

If we want to summarize, jurists determined three criterions group for non – based life:

1) A long time existable that is determined less than one day or less than half day.

2) Physical situation

3) Custom

4) But these criterions and norms is recognized by some other jurists: about time is stated that time cannot be a good criterion to recognize non – based life why the death time rest in god science and who can sayuntil when one can live.[17]

About physical situation also is specify today by develop medicine science that its possible one rest anesthesia status and life but return ordinary life time after a few day and even a few month. Some jurists said that voluntary motion is sign of life but its lack is sign of life. [18]

Verdicts related to non – based life

After study based life from jurists point of view should observe that does non – based life from jurists point of view has the life or the death verdict and deaths verdicts or alive verdicts is performed it.

Jurists is used non – based life about human in different parts and the death effects is performed on it:

One of cases is murder dispute. If a person committed a crime about other that he/she put in the dead verdict, then other person shot free bullet, jurists said first person is murderer; because second one has performed crime on person who had non – based life by jurist's interpretation and articulate has performed crime on the dead. [19].based on this fitted in 217 matter of Islamic penalty law: "when cause to injure by first person, wounded rest in the dead verdict and only last life vigor remained him/her and in this life, first became punishment and second paired crime atonement on the dead."

Also jurists know condition based life to release saves and said a slave who has non – based life is the dead verdict. [20]

Jurists also are introduced non – based life about embryo and supposed such a embryo in the wrote that life one person hit a based and other person annihilated him/her, second is murderer and if

embryo life was non – based, first one is murderer [21], therefor as murder is that annihilated a based life.

Decedent Shiehk Tosi bid: if a man passed away and his wife was pregnant if child was born and weeped and brawled and had based life to inherit. [22] Mans if child had non – based life is in the dead verdict and doesn't inherit.

Now we notice that jurists know non – based life equivalent the death. Of course there are exceptions in this field, some jurists as Alameh Heli don't know non – based life cause to inherit heris [23] and decedent Fasel Hendi believed about sick murder having a view the death if him/her life is non – based, the murder is true about him/her. [24]

The brain death

The death apparently is a simple event but its definition isn't very simple. In past a definition that presented from the death was that is complete cut and unreturnable of respiratory and cordial functions. However now medicine science develop and due to revival equipment and technology intensive cares, never respiratory system and heart incompetence and stop always is not a unreturnable situation. More in many cases, these situations changed and cause to return to life and or lead to the and or the brain death today.

The brain death in medicine definition today is cerebrum and brain stem death, in such a death body ability remain for survival by connection patient to artificial breathing engine (ventilator) for medium blood circulation and oxygen exchange, because what cells life of human body depend on it send oxygen and blood to body tissues and this action is performed by its body organs means heart and lung [25]. But brain is dead and it is impossible braid destroyed cells revival.

Based on physicians and experts ideas of medicine sciences braid death certain symptoms will appear 36 hours after cut blood circulation to brain. These special changes are as: sectional and entrance cerebellum necrotic tissue to area under spinal cord upper segments and anterior Nkrvzbof pituitary gland.

Method recognition of brain death

Because here we familiarize better the brain death and its method recognition in medicine, telling subjects from braid death chapter of nerves surgery complete, publication of doctor GHolamreza Bahador Khan, nerves and brain surgery expert and nerves and brain surgery department chief of hospital SHahid Kamyab related to Mashhad medicine sciences university and with narrate of this hospital site:

The brain death recognition

Unreturnable stop of whole brain functions state the brain death. Realization this definition depend on

two important subject: first: there is a clear reason for the brain functions stop unreturnable. For example, hitting bullet to skull or extensive bleeding functions involve to stop that include cerebellum functions (brain hemisphere) and brain stem, therefore whole brain stem reaction should disrupt than above definition realized.

Brain hemisphere functions majorly include see – hear – speak – intellectual – reflection.

A patient who spend in anesthesia or unconscious state doesn't have these functions and there for brain hemisphere are inactive but such a patient can have automatically breathing, pupil's light reaction and automatically motions in organs and eyes that is brain stem active sing.

Brain stem majorly is responsible breathing adjustment, pupil's light reaction adjustment, automatically motion development of eyes and organs and gulp adjustment and etc.

A patient who in addition to deep unconscious state doesn't have automatically breathing and ones pupils is fixed and without light reaction or doesn't have any motion in organs and eyes with each stimulation type and reaction disrupt in him/her means complete stop of whole brain Function clinical states such as deep anesthesia, (amb dessert state, decorate state and plant state and etc, should not mistake with the brain death that brain death that there aren't in some or all brain stem functions.

Prevalent reasons of the brain death

Brain shock as influential and or as closed.

Brain veins events include:

10, 1 brain – blood incompetence brain bleeding.

20, 2 space – occupying tolls into skull (tumor, infections,)

30, 3 brain hypoxia due to heart stop that return by lung and heart revival actions.

Similar states of the brain death

It's possible some clinical conditions created signs like the brain death in patients, the most common these conditions consist of:

- Toxicity with alcohol, phenobarbital and other drugs weaken neural system.
- Obstructive factors of muscular neural system.
- Metabolical disorders of muscular neural system.
- Metabolism disorders like liver and kidney in competence.
- Hypothermia (frozen)

The brain death recognition: the brain death recognition is based on study clinical signs of lack of firm brain functions. All following clinical signs criterions should realize about patient than can know that the brain death recognition.

Is real, absence realization even a part of a recognition criterion removed.

In addition to a period of time also should pass on patient, (supervision period) – and its duration, patient constant study proved absence change in clinical criterions by medicine team until can approach the death announcement conditions, usually more over clinical criterion realization of a confirming test, the brain death recognition also accomplish for more confidence and shorten supervision period can be from other advantages of above test performance.

a) Deep unconscious presence (3=gs): lack of automatically motions presence, absence open eyes, lack of speech respond to painful stimulations [26]

b) Absence brain stem reactions include:

1, absence pupil light reflex wither direct and or indirect.

2, absence cornea reflex.

3, absence reflex

4, absence cough reflex.

5, absence reflexes related to eyes motions

a. Lack of head eye reflex presence

b. Lack of equilibrium – eye reaction presence (caloric test with cold water) [27]

6, lack of automatically breathing presence. Patient should depend on artificial breathing system and automatically doesn't emerge breathing motions, lack of breath presence (Apneh) can study by Apneh test [28].

Not exist the brain death similar states.

In patients who above clinical criterions is realized also should investigate body central temperature grade and this temperature is grade is upper than 9. Farenhight grade or 32/2 centigrade grade also patient blood reassure surely should be equal or more than 90 millimeter mercury in systolic part and above subject means that patient involved hypothermia and or thistle phenomenon.

Also toxicity symptom with drugs and metabolic conditions that pretenses can develop like the brain death also don't observe in patient as each of doubt presence should do experimental tests to determine blood level of suspecting materials.

Period of time supervision on patient

a) As development agent of patient brain death is recognized and lack of its returnable is true "hitting bullet to skull or extensive bleeding of brain in a patient who brain death clinical criterions found by a reliable examination after 6 hours exact supervision and if confirm the brain death with be true on him/her.

b) In above statue if the death confirming test isn't used due to lack of possibilities present period of time supervision will be 12 hours and second

reliable examination in the end of this period will confirm the brain death.

c) If the brain its returnable isn't true, period of time supervision is recommended minimum 12 hours and maximum 24 hours.

d) In cases that brain death is as a result not reaching oxygen to brain (Anoxy) period of time supervision is recommend did 24hours for the brain death certainty.

The brain death confirming tests

By following testes can examine the brain death clinical recognition and abstain a recorded confirmation for it.

Angiography 4 brain vein: this is the most classic and reliable in this case and lack of blood circulation presence of skull norm area into brain express the brain death after its accomplishment.

2.1 angiography 4 brain vein: this test is the most classic and reliable in this case and lack of blood circulation presence of skull certainty and won't need to period of time wait after its accomplishment.

2.2 angiography brain with radio isotope material (crag):

This test unlike angiography 4 brain vein is practicable in patient bed and in respect to accomplishment comfort has superiority on it. Radio isotope material become photography through injected vein and by special camera.

This test also isn't indicated well brain stem area activity and it is valuable needs 6 hours supervision time after find the brain death clinical criterions.

Reasons of the death announcement

Recognitions and determine of the brain death is important of two aspects. These two subjects from totally logical based that physicians noted the brain death announcement based on it

2.1 ability maintenance of body plant functions for a long time after the brain death.

Heart activity is support and main tenable for long days after whole brain functions is stoppedreturnable.

Physiologic disorders is reform able all such as veins – heart lack of stability gland posterior and frontal part and nutrition needs. A patient involved the brain death can keep in ICU for long days by above disorders reform that current standstill is 107 days but in rare cases such as: effort for rescue of an embryo in a mother belly who is caught in the brain death. Such a remedy is unsuitable from following aspects:

a) Ignore patient condition reality.

b) Lay patient family in defective circuit of vain hope and lack of certainty.

c) It scratch by society and patient family faith to medicine actions.

d) It needs to medicine and health staff to protect body that essentially is dead.

e) Enormous expenses will have without gaining useful benefit for patient.

f) Its possible cause non respect or bad operation from such a body in a long time of maintenance.

1.2, need to body different organs for ties organs to patients needy: organs ties increase provide possibility use of peoples health organs involved the brain to improve and likely to rescue other patient and cause to rescue humans life and increase society generator faculty.

Presence life can't rely organ function by point of view logic and philosophy that is changeable and or replaceable like oneself and or even artificial means.

There for lung and heart surgery that is replaceable can't be a criterion to measure presence or lack of presence life and presence life should measure with a touch stone, a touchstone that isn't changeable or replaceable that touchstone is in current situation of brain human knowledge. Brain structure and in fact this brain is that is placed senses, affections, instincts, thought, reflection and at last human soul no other body soul separation of brain by point of view religious and the brain death will be synonym with human death.

Announce mint condition of the brain death

To declare the brain death, first should find above clinical criterions in unreturnable field then brain death clinical criterions that involved deep anesthesia is absence each type of automatically motion doesn't show any sign of eyes open or motions in head and body wither with voice or with painful stimulation.

It's possible there is or not spinal cord reflexes, pupils will be in medium situation and without reflex to light and all patient brain stem reflexes are disrupted, patient was without breath and connected to artificial breath engine, in such a condition is performed Apneh test by rejected illusive factors with the brain death and fixed hemodynamic situation and patient temperature grade for confirming breath presence absence, breath returning absence or assign of breath returning in this test will mean to complete the brain death critical criterion only patient heart beat continual and patient blood circulation remain fixed from this moment to next in terms of cause to patient age and the brain death by remedial actions (the brain death criterions in children under 5 years old will differ with what is stated here).

A long time supervision and in cases a brain death confirming test has accomplished until a long

supervision and results of exactly confirming tests of the brain death is specifies by demonstrated lack of returnable of the brain death status in two last studies, along with illusive conditions presence absence.

Medical conditions is completed to declare the brain death by filling this check list. [29]

Now due to what is noted about the brain death by handwriting one of nerves and brain experts, questions are introduced and first question is that the brain death with which one of triple death and life definitions underling jurist is coincided.

Does a brain death patient has based life?

Due to all physicians are remarked together that there isn't a hope to return a brain death patient to natural life [30] but yet reasons are introduced in positive reply to this question and known a brain death patient has based life:

First reason: when brain incapacitate but heart is acted (whether automatically or by engine), body has soul owner ability for its and as long as this ability remain, person isn't dead and its confirmer is several cases of brain death patient that improved and just that physicians differ in their theory about the brain death criterion whether brain cortex die or brain cortex under layer or all brain stem, confirm this matter.

In answer can remark that object ability survival is other than object survival: means it's possible that something has ability having a trait but hasn't that train, all common people have science gaining ability but aren't scholar.

There for soul owner ability survived to body isn't cause soul presence and as a result death absence isn't provide. In addition to that it's impossible to return to ordinary life after brain stem and cortex death and in this field there isn't difference between experts and ones that improved involved anesthesia not the brain death.

Second reason: as long heart is beating (Although by engine) how can verdict to death as now activity some other organs of human also continue by helping engine and person will continue its natural life?

We said in answer that first doctor Alexis carol, French physiologist success a hen heart remain alive out of body in specific solution until 25 years, in this experimental hen heart life out of body wasn't reason on its life. This is cell life and don't related soul owner to body. Second know that human embryo heart is active before four month but yet doesn't have soul and life. Third if soul survival and founding belong to heart, then it should waste by replacement natural heart to artificial and or reincarnate by ties former person soul heart into new person body while it isn't such.

Third reason: it isn't unlikely that someday medicine science develop and also can treat brain patient, then the brain death is a kind of disease that should treat and isn't death.

We can respond that we speak about present tense and available science not about future probabilities. These patients remain alive eventually 101 days and won't see that likely future.

Fourth reason: we don't allow to kill certainly such person using precaution principle in breath and gasp. (About ties patient organs of the brain death).

Answer: this precaution is unlike precaution in some cases; become as other person is going to waste and severely needs to this organ, in fact its possible use of such person organs is obligatory.

Fifth reason: while human heart is active conventionally is alive.

In answer can remark first what is conventional? Here conventional point of view of experts people or common people. If is point of view of experts who they have declared unreturnable conditions to life in the brain death and if is common people who they cannot identify the brain death in specific conditions. While this question is introduced that patient having life? We know that team media can directed public though and will be a function conventional of point of view media owners.

Second don't forget that heart activity is conditioned to connect patient to artificial breath engine because h/she cannot respire and life engine stop by each reason, heart won't beat after a few minute.

Sixth reason: for death in jurisprudence is introduced sings such as: Enkhesaf Sadagh (depth and sink temples and temples part), mile anaf (loose and bend nose), length cover (tension and spread body skin), Enkhelae Kafe men Zeraeh (become limp and hang wrist), Asterkhaf Ghadam (feebleness and loos feed), Taghalos Onsayayn (gather and wrinkle testicles these sings is alive?)

Answer! Sings that is stated to identify death in jurisprudence for death in when science didn't develop in extent identification death through modern extremely sensitive engines. In that time should take pulse and or put a mirror before patient that it's possible to mistake a lot, there for share Moghadas was bid that keep dead for three days in suspecting cases was bid appear mentioned sings record electric flow in body and thus, supplementary experiments have developed to identify absolute that noted in above, therefor emergence of death signs isn't necessary.

Moreover if we want to act by science the very time that all brain death patients involved to stop heart activity because of breath stop and death signee emerge them after one two days. It's possible

basically to discover the brain death by new engines and also it's possible to keep ones breath by this very technology. Seems it isn't correct that want to use for keeping the brain death patient breath from day technology but set science to one's death conditional to old methods because patient blood circulation and breath set up by identifying the brain death and connect patina in ventilator engine and mentioned sings an jurisprudence won't appear because of body cells life that food and oxygen reach them.

Is the brain death reach life?

If sings jurists stated about human non – based life know criterion, these sings is conformable on the brain death patients. Criteria such as lack of motion, lack of eat and drink and lack of speech and absence vigor. But these criteria also is conformable on people who are in anesthesia. There for can't account a criterion for conformity of non – based life on these people experts undertake above cases conformity on patient person. In this case can state that physicians allow to determine confirmation and recognize patient person has non – based life or declared one has life?

Is the brain death the same death?

Some believe that distinct criterion of death and life is connection between soul and body and occupation soul and its dominance implement on body through brain sublime cortex cause to leave affection between soul and body. Why brain cells are repairable and as destroy to return is impossible and because brain cells are place emergence of soul occupation effects on body with their death, soul also doesn't have a place to dominate on body and leave body shape and certain death will take place and although physicians keep alive several person organ like heart, lungs, eye cornea and... for using better from ties organs of the brain death by helping mechanical ventilation engine as short and temporary but revival of several person organ as temporary can't cause body complete life survival. [31]

Writer view is that this reason is arguable, one of reason that stated about the brain death conformity on life is a method possibility probability to treat the brain death in future. Evidence that yet didn't find any method for brain destroyed tissues revival but just probability can suspect human about life probability presence in the brain death patient. Its right that life presence probability doesn't prove life but case we clearly can't judge patient death of the brain death and if there will be cure possibility can be area son of soul relation with body in the brain death status. There for can't result by logical debates that soul surely separate from body by the brain death.

Ofcoursr, if we define life as Ragheb had defined with susceptible faculty and atrophy faculty presence.

Certainly brain death patient is without this faculties.

Other questions as are introduced in relation to the brain death:

Wither the brain death patient properties transfer after specify him/her status to heirs or not?

- For him/her maintenance expense can all him/her properties us or only van him/her properties third use and is its future consumption conditional in heirs agreement?
- When do the brain death patient wife/husband force start?
- Do separation of ventilator engine from patient permit?
- Important all wither separation and ties him/her organs to needy patients permit or not?
- Answer to these questions is conditional to that specified the brain death is inserted which class of triple group non – based, based life and death that each one of these has its specific verdicts. Of course, about last question also should study whether essentially separation of dead organs permit or not?

Conclusion

There are great questions about non – based life between jurists but its criterions correctly isn't determined and organizations is accomplished about time criterion and body status by jurists themselves.

About the brain death also that is founding problems yet exact view isn't expressed through jurists. And there is view difference between applicants about the most important question related to these patients meaning organs grant. Writer view is that it's better to identify non – based life and also the brain death conformity on each life confirmations entrusted specific conventional meaning medicine experts.

Perhaps point of view Ayato AllahNori Hamedani is closer to right in this case that responded in interrogative answer in this case is lack of brain wavers symbolic death or lack of cardinal waves? Jurist obligate who Islam holy religious verdicts understands from Majidauran and anecdotes of people of inmate (peace upon him) but matter identification doesn't undertake jurist and often its identification undertake cases in above also, criterion and quantity is conventional view and experts view, seems as long as blood flow in body venis and beating, person hasn't passed away and so happen cases that people of conventional is ambivalent and amazed and experts also can't identify certainly, we should refer other rules that is compiled in jurisprudence principles ...[32]. Due to above religious decree seems who he standardize specific conventional and there is doubt they supposed to refer jurisprudence that seems it is a good solution to

identify non – based life and also the brain death patient task.

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