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Organ Donation: Legal, But Still Controversial

[Knesset passes laws but some influential rabbis call it murder.](#)



Halleli Walfish, a young Israeli who died in her Israeli day-care center, at the age of 18 months. Her Orthodox family decided to donate her organs to four young children, who are reportedly doing well.

by Michele Chabin
Israel Correspondent

Jerusalem — Two new laws intended to increase the number of organ donations and transplants in Israel could actually have the opposite effect, due to the religious controversy surrounding their passage.

While transplant advocates initially hailed last month's legislation as an historic compromise between the notoriously stubborn Ministry of Health and equally obstinate Chief Rabbinate, recent clarifications by Sephardi Chief Rabbi Shlomo Amar, and outright denunciations by Ashkenazi haredi leaders could plant doubt into the minds of Israelis already skeptical about donating organs.

This development is particularly worrisome, experts say, because of Israel's dismal organ



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donor rate, which every year contributes to the death of roughly a tenth of the 1,000 citizens awaiting a transplant.

Opinion polls reveal that many Israeli Jews, even more



than their Muslim counterparts, believe that organ donation violates religious law. (Rabbinic authorities are divided on the issue.) Many Jews think that a body must be buried whole, or that all parts of the body should be buried together, a notion reinforced by the sight of fervently Orthodox Zaka teams scraping up body parts after terror attacks. Among other things, the legislation outlaws the trafficking of organs but provides incentives to potential donors, like reimbursement of costs and giving donors priority on the transplant list, should the need arise. Some say this is tantamount to a pay-off. Most significantly, one of the laws stipulates that organs may be harvested – with the family's consent – once a potential donor is determined to have suffered brain stem death. Thanks to lengthy negotiations between the Health Ministry and the Chief Rabbinate, the law also stipulates that the hospital neurologists charged with determining brain-stem death must undergo religious training to learn the halachic criteria and definition of death for the purposes of transplant.

This stipulation reportedly angered many in the medical establishment, who fear that increased rabbinic involvement could lead to meddling.

Though the legislation could not have passed without the approval of Rabbi Amar and his mentor, the powerful former Chief Sephardi Rabbi Ovadia Yosef, both felt the need to clarify their position in the wake of harsh criticism by representatives of Rabbi Yosef Sholom Elyashuv, the most influential leader in the haredi Ashkenazi world. Rabbi Elyashuv's supporters pasted "pashkevils," or posters containing rabbinic declarations, on the walls of haredi neighborhoods stating, "Thou Shalt Not Kill" and "brain death is murder in every sense," according to Ynet News. They called on both physicians and the religious public to accept the cessation of cardiac activity as the definition of death.

The day after the legislation passed in late March, MK Moshe Gafni from the ultra-Orthodox United Torah Judaism party, said the new law blatantly violates the Torah. Voicing Rabbi Elyashuv's opinion, Gafni said that "from the Torah's point of view a brain-dead person is still alive. Today, with all the recent advances in medical science, a person who is brain-dead can be saved by doctors."

Neurologists say that when an individual's brain stem is no longer functioning, there is no chance of recovery. Furthermore, they stress, an organ transplant has a much greater chance of succeeding if the donor's heart is still pumping blood to vital organs.

Although the Chief Rabbinate established guidelines related to brain stem death more than two decades ago, the rabbis "always felt they should be more involved in the decision-making process in the hospital," an expert in the field told The Jewish Week.

During a lecture on the subject of transplants this week, the expert said, Rabbi Amar reiterated his and Rabbi Yosef's endorsement of the brain-stem death criterion, but demanded that the cases of all Jewish donors be brought to them for approval.

Observers familiar with the issue say the rabbis are reluctant to give a general "heter" (or, approval) and want to be consulted on each potential case of organ donation, continuing the turf control issue between the Chief Rabbinate and the Ministry of Health.

While congratulating the ministry and the Rabbinate for the "productive working relationship" that enabled the transplant legislation to be passed, Robby Berman, founder of the Halachic Organ Donor Society in New York, said he is "skeptical" it will have "any significant impact" on organ donation in Israel.



"The bottleneck to donation is not the law but people's misunderstanding of the medical and halachic issues surrounding brain-stem death. The solution is education, not legislation. And the government did not allocate significant funds to educate the public on this issue," Berman said.

Few people are watching the fallout over the transplant laws more closely than Rabbi Dr. Avi Walfish, whose 18-month-old granddaughter, Halleli Walfish, suffered brain-stem death after becoming entangled in a curtain at her day care center in Tekoa, on the West Bank, in late February.

"I find it dismaying not so much because of the [different] halachic opinions, per se. Everyone is entitled to their own views," Walfish stressed. "What's upsetting is the fact that there are other important haredi rabbis who feel otherwise, but are afraid to speak out" in favor of the brain-stem death criteria. "I think this demand for lock-step unanimity among haredi rabbis is against the Torah, and that it's deplorable."

When, soon after Halleli was admitted to Sha'are Zedek Hospital, it became clear she would not recover, the Walfish family consulted with some of the world's leading rabbis and physicians to determine whether the toddler – an only child—met the criteria for brain-stem death. "We decided to donate Halleli's heart, liver and kidneys because we believe very strongly this is the right thing to do since we do accept the concept of brain death," Walfish said. "Once there's the determination, it's certainly a tremendous mitzvah and an opportunity to pull something positive out of this tragedy."

It is a tragic twist of fate that Rabbi Binyamin Walfish, Avi's father and a former executive vice president of the Rabbinical Council of America, was one of the architects of the RCA's donor/transplant guidelines back in the early 1990s. To this day the public can download the protocol and living will from the Orthodox organization's website.

The elder Walfish said he had heard that the RCA is re-examining the halachic protocols, a fact confirmed by RCA Executive Director Rabbi Basil Herring to The Jewish Week. Rabbi Herring said the results of the two-year examination could be announced as early as next month, at the organizations' national convention.

"I think it would be a terrible mistake if the RCA changes their position on brain death," Binyamin Walfish said. "I would think it was the most stupid thing it ever did. It would be sentencing to death hundreds of people."

Four very young children received Halleli's organs, including one who was literally on the way to Ben-Gurion Airport when her parents received the call that a liver was available in Israel. "Four other children are living today because of Halleli," Binyamin Walfish said. "You have to credit my grandson and his wife, who were brave enough to make this decision.

"Halleli," said her great-grandfather, "was a beautiful and lovely child."

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