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COMPLEXITIES INVOLVED IN ORGAN TRANSPLANTATIONS AND THE LAWS GOVERNING ORGAN TRAFFICKING IN INDIA AND ABROAD

AUTHORED BY - ADITYA KISHOR A

Abstract: Organ transplantations save lives but are mired in multifaceted complexities that require careful consideration. This abstract delves into the intricate challenges of organ transplantation and the legal mechanisms aimed at preventing organ trafficking in both India and the global context. Medical intricacies plague organ transplantations. A severe shortage of donor organs creates long waiting lists, and compatibility issues need meticulous matching between donor and recipient to mitigate the risk of rejection. Additionally, the preservation and transportation of organs present logistical difficulties due to their limited viability outside the human body. Organ transplantation is a field with ethical issues. Ensuring the organ distribution process is fair and transparent is an ongoing challenge. It is an equally critical issue since informed consent puts donors and their families under moral and emotional stress. Ensuring organ donors supply their organs voluntarily and without coercion or exploitation is crucial. To combat this menace, governments worldwide have set legal frameworks in place; they range from outright bans on the sale of organs to setting up regulatory organisations that oversee transplant procedures. The Transplantation of Human Organs Act (THOA) of 1994 in India deals with the difficulties involved with organ transplantation. Its two main aims are to stop the sale of organs for profit and to create a national register. Penalties for breaking the law prove the country's commitment to moral transplant procedures. Internationally, organ trafficking and transplant tourism are condemned by the World Health Organisation (WHO) and the Istanbul Declaration. Numerous nations have accepted global accords aimed at preventing the trafficking of organs, underscoring the significance of moral and legal guidelines in organ donation.

Keywords: Organ transplantations, organ trafficking, donor shortage, transplant tourism, informed consent, ethical issues.

INTRODUCTION:

Organ transplants are a noteworthy example of medical progress since they give many people who have experienced organ failure a second chance at life. Organ transplantation is bristling with complex ethical, legal, and medical issues. The ongoing global shortage of organs complicates matters further, creating long waiting lists and complex selection criteria for these priceless gifts of life. This shortage always poses moral problems in distributing organs, leading to a painful moral predicament.

Many nations have implemented strict laws and rules to combat organ trafficking and protect the integrity of organ transplantation. The primary legal framework governing organ transplantation in India is the "Transplantation of Human Organs and Tissues Act" (THOTA) other countries have similar legislations to combat this problem. The Transplantation of Human Organs Act (THOTA), passed in 1994 and later amended, legalises organ donation and transplantation while strongly emphasizing voluntary, charitable contributions and outright banning commercial sales of organs. Additionally, the statute requires hospitals to set up ethics committees to analyze and approve transplant cases, ensuring both legality and ethics. Additionally, permission committees control the distribution of organs while upholding justice. On a global scale, a decisive effort is put into stopping organ trafficking and advancing moral organ transplantation.¹ Organisations like the World Health Organisation (WHO) have set up the highest ethical standards in organ transplantation. The World Medical Association has supported the Istanbul Declaration, which lays forth guidelines to stop transplant tourism and the trafficking of human organs. In addition, a convention created to prevent and fight organ trafficking, the Council of Europe Convention against Trafficking in Human Organs, focuses on protecting the rights of donors and recipients. Countries often work together internationally to combat organ trafficking, sharing information and taking legal action against traffickers.

RESEARCH PROBLEM:

There are various challenges play a role in acting as barriers to organ donation in India and worldwide, such as lack of awareness, cultural beliefs, trust concerns, organ trafficking, poor infrastructure, organ shortages, legal uncertainty, family consent, medical compatibility, post-transplant care, and moral challenges. These obstacles impede organ supply, lengthen the waiting

¹ Tanmay Avinash Deshmukh, *Illegal Organ and Human Trafficking during COVID 19*, 4 INDIAN J.L; LEGAL Rsch. 1 (2022).

period, and raise ethical issues, demanding initiatives in education, legislative change, and healthcare infrastructure improvement. Organ transplants need complex medical processes such as organ compatibility, donor-recipient matching, and post-operative care. Organ procurement, informed consent, and fair allocation are all ethical and legal concerns. The Transplantation of Human Organs and Tissues Act of India (THOTA), governs organ transplantation and prohibits organ trafficking. Globally, regulations vary, although many countries criminalize organ trafficking because of the possibility of exploitation. There is a need to combat human trafficking, which necessitates international collaboration, strict law enforcement, and public education. Balancing medical developments, ethical concerns, and regulatory frameworks is critical to maintaining safe, egalitarian, compassionate organ transplant practices. Demand for organ transplantation surpasses supply because of technical improvements, long waiting lists, limited donor availability, cultural barriers, and a lack of awareness. Immediate action is needed to save lives.

Statistics on organ donations vary according to country. In many nations, the demand for organs outnumbers the supply. Waiting lists have become more extended, increasing the death rate among transplant recipients.

RESEARCH OBJECTIVES:

1. To analyse the present legal framework to curb organ trafficking.
2. To investigate the causes for illegal organ trafficking.
3. To compare Indian trafficking laws to that of foreign laws.

RESEARCH QUESTIONS:

1. Whether the laws governing organ trafficking in India are effectively tackling this issue?
2. Whether Indian laws are effective in curbing organ trafficking when compared to other countries?
3. What are the major causes for increase in illegal organ trafficking in India?

RESEARCH METHODOLOGY:

The researcher has adopted a doctrinal method of research. The aims and objectives are exploratory. The data has been collected from primary sources such as statutes and cases, as well

as secondary sources like journals, treatises, digests, and law reports.

MODE OF CITATION:

The mode of citation used by the researcher in this paper is Bluebook 20th Edition.

HISTORY OF ORGAN DEMAND:

Designed in 1988 to track organ donation in the US, the Organ Procurement and Transplantation Network (OPTN) is a nationwide computerised system. The OPTN acquired the organs of around 125,000 deceased and 100,000 living donors during its first 20 years of operation. In the West, organ donation spiked during this time. For instance, in the US, more than 9,500 kidneys were removed from donors in 1988; in 2008 alone, only roughly 20,200 kidneys were retrieved. For some organs, the increase in organ donation has been more moderate than for others; for example, over 2,200 hearts were recovered in 2008 versus nearly 1,800 in 1988. As a result, the supply and demand for transplants continue to differ significantly.²

Organ donor tracking in the US was started in 1988 with implementing of the Organ Procurement and Transplantation Network (OPTN), a nationwide computerised system. Approximately 125,000 deceased and 100,000 surviving donors had their organs procured by the OPTN during the first 20 years of its operation. Organ donation in the West experienced a sharp rise at that time. In the United States, for instance, kidneys were recovered from donors in 1988 for roughly 9,500 cases, but in 2008 alone, over 20,200 cases were confirmed. Potential living donors must undergo a thorough physical and psychological workup to help ensure that no adverse outcome will occur before, during, or after donation.

In the United States, local organ-procurement organizations (OPOs) coordinate deceased donation. OPOs evaluate potential donors, discuss donation with surviving relatives, and arrange for the surgical removal and transport of donated organs. Organs in good condition are removed in a sterile surgical procedure; all incisions are closed, so the donor can still have an open-casket funeral. Most living donations are to family members or close friends, but some “altruistic” or “nondirected” donors do not know the recipients.

² Rainer Gruessner, *organ donation*, BRITANNICA (October 21, 2023, 6:32 AM), <https://www.britannica.com/topic/organ-donation>.

After organ removal, the donor is taken off artificial life support. The organs to be donated are flushed with, and stored in, chilled preservation solutions (4 °C [39.2 °F]). Preserving organ function is key, and long-term storage is not possible; the organs must be transplanted within 6 to 72 hours after removal, depending on the organ (the heart and lungs may be practical for only 4 to 5 hours).

Under U.S. law, deceased donation stays a consent system. Surviving relatives keep the right to dissent even if the potential donor gave explicit consent via a driver's license, living will, or similar document. In some states, however, those laws are changing, with movement toward preventing a relative from overriding an individual's decision to donate his organs if the desire to donate has been specified in a legal document. In the United Kingdom, deceased donation is voluntary, and no consent is presumed. In addition, legal documentation of a person's decision to donate cannot be overturned by the family in the United Kingdom. The legal frameworks surrounding organ donation are changing in nations like China and India, whose religious and cultural traditions diverge from those of the West.

Carefully balancing the risks and advantages for both the receiver and the living donor is necessary. A healthy donor always faces an unnecessary major surgical procedure and even the possibility of death. The odds of dying as a result of kidney donation are approximately 1 in 8,000–10,000; those of giving a portion of the liver, roughly 1 in 1,000; and those of donating a significant amount of the liver, up to 1 in 100–500. Furthermore, life donors might not be able to maintain the same level or rate of disability, health, or life insurance that they had before donating. Financial concerns may be worsened by a delay in returning to work because of unforeseen problems. Some countries have set up programs to reimburse qualified living donors for travel and other expenses. Follow-up registries for living donors, which track quality of life and other factors after donation, exist in only a few countries.³

Illegal organ trade and trafficking have resulted in physical and financial exploitation of some living donors and may have contributed to an occasional loss of faith in the medical system. Yet despite the challenges, organ transplants offer recipients a new chance at healthy, productive, and normal lives and return them to their families, friends, and communities. Whether the donor is

³ Jeffrey M Prottas, *Organ Procurement in Europe and the United States*, 63 Wiley on behalf of Milbank Memorial Fund pp. 94-126 (1985).

deceased or living, organ donation stays a profoundly generous and life-affirming choice. Many families of deceased donors acknowledge that the “gift of life” made possible by organ donation helps them cope with their tragic loss. Likewise, most religions (including Christianity, Islam, Judaism, and Hinduism) support organ donation as a charitable act of love and giving.

INCREASING DEMAND FOR ORGAN TRANSPLANTATION AND THE SUPPLY-DEMAND GAP:

There is an increasing demand for organs, and this has led people who take advantage of and profit from exploiting poverty-stricken parts of India to offer cash for organs. This has resulted in an underground mafia-style culture increasing demand for organ transplants, and the supply-demand gap is a significant issue discussed widely. There is a worldwide shortage of organs available, and the same condition is faced for transplantation in India. This shortage is due to many factors, including the increasing organ demand. One possible suggestion that could well be converted into reality is the idea of people who meet with accidents transplanting their organs so that it could minimize the popular demand for organs to an extent.⁴

DATA AND STATISTICS RELATED TO ORGAN TRANSPLANTATION IN INDIA AND GLOBALLY:

The acute lack of organ donors is the root cause of India's illegal organ trafficking issue. In India, around 200,000 patients need kidney transplants annually, yet only about 3 per cent of these requests are fulfilled. Strict rules limiting who can give make it challenging to find a matched donor, and many individuals in need cannot afford the costly surgery. This significant gap in the supply-demand of donor organs creates a fertile ground for illegal organ trafficking. As per the World Health Organisation (WHO), 5–10% of kidney transplants worldwide have been linked to organ trafficking, which involves commercial transplantation that often takes place beyond the national medical system. An estimated 2,000 Indians sell their kidneys each year, typically to settle debts or cover essential expenses. Organ trafficking is an illegal activity that preys on the weak.

Notably, instances of organ removals occurring without the patient's consent have been reported.

⁴ David E Jefferies, *The Body as Commodity: The Use of Markets to Cure the Organ Deficit*, 5 Indiana University Press 621-658 (1998).

The lack of a robust system for obtaining organs from brain-dead people and the reluctance of potential donors contribute to the organ black market. Only 10 of the 205 brain-dead patients treated at the AIIMS Trauma Centre over five years were found to be potential organ donors, according to one research. The illegal organ trade has been exposed in several high-profile cases, such as the 2008 case of Amit Kumar, a fake doctor who illicitly removed kidneys from individuals in different states and transplanted them into paying patients in Gurgaon.⁵

Another case involved illegal kidney trade among fishermen who lost their jobs after the Indian Ocean tsunami 2007. An illicit transplant organ racket in Punjab was also uncovered in 2003.⁶ Addressing this issue requires a comprehensive approach, including increasing public awareness about organ donation, improving the infrastructure for organ procurement from brain-dead individuals, and enhancing regulatory measures to curb illegal organ trafficking.

Organ transplantation is a procedure that saves lives by addressing critical health issues. However, it also presents challenges. Within the field of organ transplantation, three key concerns appear organ rejection, the scarcity of donors and the role of drugs. The issue of organ rejection looms large in transplantation. When a foreign organ is transplanted into a recipient's body, their immune system may perceive it as a threat and initiate a response to reject it. This rejection can result in graft failure. Endanger the recipient's life. To address this, patients are usually prescribed medications that dampen their system's response to prevent rejection.

Nevertheless, these drugs come with their complexities. The scarcity of donors poses a challenge in the realm of organ transplantation. The demand for organs far exceeds the supply. This shortage arises from factors such as public awareness about organ donation, stringent donor eligibility criteria, and ethical considerations surrounding organ procurement. Consequently, individuals needing life-saving transplants often meet waiting lists during which their conditions may deteriorate or become terminal. Immunosuppressive drugs play a role in preventing organ rejection. These medications suppress the recipient's response so the transplanted organ can function without attack. However, these medications can have effects and pose potential risks to long-term health. When individuals rely on immunosuppressants for periods, their immune

⁵ Ganapati Mudur, Indian doctors hope kidney scandal will spur cadaver donation programme, National Institutes of Health (.gov) (Feb. 23, 2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2249658/>.

⁶ Shwaq Masoodi, *Why organ trafficking thrives in India*, LIVEMINT(October24,2023,10:00PM), <https://www.livemint.com/Politics/pxj4YasmivrAhanv6OOCJ/Why-organ-trafficking-thrives-in-India.html>

systems may weaken, leaving them vulnerable to infections and other health issues. Moreover, those tablets may additionally have damaging outcomes on other organs, including the kidneys, leading to extra medical problems.

Researchers and scientific experts continually strive to address these challenges. One technique to mitigate organ rejection is to increase extra particular and personalized immunosuppressive regimens, tailoring treatment to character patients to decrease aspect results at the same time as keeping graft features. This includes using more recent, centred immunosuppressive capsules to strike a better stability between immune suppression and universal fitness. To fight organ scarcity, advocacy and educational efforts to boost organ donation fees are essential. Encouraging people to check in as organ donors, improving organ procurement and allocation processes, and exploring options consisting of xenotransplantation (using animal organs) are avenues being pursued to increase the donor pool. The discipline of organ transplantation faces complicated troubles, from the risk of rejection to the shortage of donors and the reliance on immunosuppressive capsules.

Addressing those demanding situations requires a multidisciplinary approach among scientific experts, researchers, policymakers, and the public. With ongoing improvements in scientific technological ability, stepped-forward organ procurement tactics, and modern immunosuppressive strategies, the transplantation network is running to enhance affected person effects and save extra lives while balancing the associated risks and advantages of these existence-saving approaches.

LEGAL FRAMEWORK FOR ORGAN TRANSPLANTATION IN INDIA:

The criminal and regulatory framework for organ transplantation in India is ruled by the Transplantation of Human Organs and Tissues Act (THOTA) of 1994. This act was enacted after the recommendation of the L.M. Singhvi committee, which was formed to address the rampant upward push in organ trafficking and unlawful organ harvesting inside the country.⁷ The THOTA offers the elimination, storage, and transplantation of human organs and tissues for therapeutic functions and to save you from illicit trafficking of organs and tissues and the prevention of

⁷ Money Veena V. R., *Issues and Challenges of Organ Transplantation in India: A Scrutiny*,1 INT J.L. MGMT., HUMAN. 37 (2018).

business dealings. Under the THOTA, someone above 18 years of age can give consent for the elimination and transplantation of their organs after their demise in the presence of two witnesses. The character can revoke such consent at any time before their death. The final choice of such donation is of the donor. The act also offers the law and registration of hospitals which can store, put off, or carry out such transplantation tactics. The display expresses the appointment of a proper authority with the aid of the imperative rules to implement such standards as prescribed with the government's help. An advisory committee shall also be fashioned to endorse such proper control.

The THOTA additionally deals with offences and penalties that may arise underneath the act. For instance, removal of such human organs without the permission of authority may also bring about ten years of imprisonment and a best of 20 lakh Rupees. In industrial dealings of such organs, punishment can also extend from 5 to 10 years, and the penalty may additionally amplify from 20 lakh rupees to 1 crore rupees.⁸

IN COMPARISON WITH INTERNATIONAL PERSPECTIVE:

India's organ transplant legal system complies with international standards established by the Istanbul Declaration and the World Health Organisation (WHO). The World Health Organisation has established guidelines for the moral acquisition and transplantation of human organs to ensure that organ transplantation is carried out in a transparent, safe, and ethical manner.⁹ Following those recommendations, the Transplantation of Human Organs and Tissues Act (THOTA) of 1994 was passed in India. Its objectives include preventing illegal organ and tissue trafficking and regulating the removal, storage, and transplantation of human organs and tissues for therapeutic purposes.¹⁰

The Declaration of Istanbul, which was adopted in 2008, is a fixed of ethical concepts that purpose to promote moral practices in organ transplantation. The Declaration emphasizes the importance of transparency, accountability, and the protection of the rights of donors and

⁸ Preethika Vijayakumar, *Organ Transplantation in India - Would an Opt-out System of Organ Donation Be Effective?*, 3 Jus Corpus L.J. 59 (2022).

⁹ Sylwia Gawronska, *Organ Trafficking and Human Trafficking for the Purpose of Organ Removal*, Two International Legal Frameworks against Illicit Organ Removal, 10 NEW J. EUR. CRIM. L. 268 (2019).

¹⁰ Act No. 42 OF 1994, Acts of Parliament, 1994, Transplantation of Human Organs and Tissues Act, 1994 (India).

recipients.¹¹ The THOTA in India additionally emphasizes those standards, as it calls for the presence of witnesses at some point of the consent technique and regulates the registration and regulation of hospitals that behaviour transplantation processes.

However, there are a few differences between India's prison framework and international requirements. For example, the Declaration of Istanbul emphasizes the significance of voluntary donation and prohibits the sale of organs. In India, the THOTA allows for the donation of organs after death, however it does not restrict the sale of organs. This has caused concerns approximately the exploitation of vulnerable populations, together with the bad, who can be coerced into selling their organs. In the end, India's legal framework for organ transplantation is basically consistent with international requirements set via the WHO and the Declaration of Istanbul.¹²

RECENT INCIDENTS:

The Amritsar police department in Punjab, India, has discovered a significant organ trafficking case that has been dubbed "the mother of all scandals in human organ trafficking in India." Doctors, brokers, and organ donors have all been taken into custody. Those under investigation are transplant surgeon Dr. Parveen Kumar Sareen of Kakkar Hospital, and authorization committee head Dr. O.P. Mahajan of Government Medical College.

Police officials estimate that between 1997 and 2002, doctors, intermediaries, and contributors exchanged 1.5 billion rupees. Kidney transplants were a part of this illegal organ trafficking industry, and each transplant cost anything from 500,000 to a million rupees. The primary beneficiaries were the doctors and intermediaries, while the donors, primarily impoverished migrant labourers from Uttar Pradesh and Bihar states, received only 25,000 to 50,000 rupees. The Transplantation of Human Organs Act of 1994 in India allows for organ donations between relatives without monetary benefits. Also, it allows donations between unrelated donors without financial gain if it arises from love and affection for the patient.¹³

¹¹ Mario Abbud-Filho et al., *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, <https://www.researchgate.net/publication/296608014> (Apr. 4, 2016),.

¹² Kate Greasley, *A Legal Market in Organs: The Problem of Exploitation*, 40 *Journal of Medical Ethics* 51–56 (2014).

¹³ Sanjay Kumar, *Police uncover large scale organ trafficking in Punjab*, NATIONAL LIBRARY OF MEDICINE (October 27, 2023, 5:30), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1125055/>

The exploiters of this scandal used this clause to make significant profits. Police authorities have said that since 1995, 2384 kidney transplant procedures have taken place in Punjab, with 1972 cases approved in Amritsar, and 1522 of these took place at Kakkar Hospital.¹⁴ The "donors" often received inadequate postoperative care, and some were threatened with imprisonment for their illegal involvement in the transplants and after ejected from the hospital. Tragically, six labourers have been confirmed dead because of these illegal transplant operations, with concerns that the actual number of fatalities could be higher.¹⁵ The police are investigating such cases, but many addresses of donors and recipients in the records are believed to be fake. This case underscores the urgent need for stricter regulation, oversight, and enforcement in organ transplantation to prevent such illegal activities and protect vulnerable individuals from exploitation.

SUGGESTIONS:

Possible suggestions in combating with this menace of organ trafficking are Strengthening the implementation of the human trafficking framework, Revising human trafficking laws to ensure that organ removal is included as a form of exploitation and to have all relevant illicit means that could be used to control an organ donor, Utilizing the human trafficking framework, where possible, to avoid the risk that vulnerable organ donors are prosecuted, Addressing the de facto immunity of medical professionals and other facilitators engaged in illicit organ removal, improving international cooperation to maximize the complementary operation of both trafficking framework, Developing an effective criminal justice response to human trafficking, raising awareness and educating the public about the dangers and consequences of organ trafficking are among the best possible and feasible suggestions to deal with this issue.¹⁶

CONCLUSION:

In conclusion, organ transplantations are intricate medical procedures that offer hope and often a second chance at life for individuals suffering from organ failure. These procedures, however, are laden with many complexities that span medical, ethical, and logistical dimensions. Medical

¹⁴ Farhan Navid Yousaf, Bandana Purkayastha, *Social World of Organ Transplantation, Trafficking, and Policies*, 37 Palgrave Macmillan Journals 190- 199 (2016).

¹⁵ Madhur Singh Rana, *Factors Responsible for Human Organ Trade in India*, 2 INDIAN J. INTEGRATED Rsch. L. 1 (2022).

¹⁶ Liliana M Kalogjera, *New Means of Increasing the Transplant Organ Supply: Ethical and Legal Issues Organ Transplants: The Costs of Success*, 4 American Bar Association 19-23 (2007).

complexities include the technical challenges of surgeries, compatibility assessments, organ preservation, and post-transplant care. Ethical dilemmas appear in decisions surrounding organ procurement and allocation, raising moral questions that must be addressed transparently and ethically. Furthermore, the significant lack of practical organs worsens these complications, resulting in extended waiting lists and terrible loss of life. Therefore, organ transplantation is not simply a medical procedure but also a multifaceted ethical and logistical problem that needs careful thought and ongoing refinement. Organ trafficking is a major global issue that throws a pall on transplantation's lifesaving potential.

Organ trafficking involves the illegal trade of organs, often exploiting vulnerable donors in an illicit and inhumane manner. It is a profoundly immoral practice that feeds on the desperation of people in need while posing a serious threat to public health. The seriousness of this situation emphasises the significance of solid legislation and regulations controlling organ transplantation. Legislation and monitoring procedures have been implemented in India and many other nations to promote openness, fairness, and ethical standards in transplantation. These legislative frameworks are critical for protecting the dignity and rights of both donors and recipients, as well as limiting the spread of organ trafficking networks.

International cooperation is fundamental in addressing the complexities surrounding organ transplantation and combating organ trafficking. Organ trafficking is a global problem that calls for international cooperation; it is not limited to any one nation. Governments should cooperate to enact and uphold policies that effectively outlaw the trafficking of organs and advance moral organ transplant practices. By sharing knowledge and coordinating enforcement, the international community can better safeguard the rights and well-being of transplant recipients. Additionally, raising public awareness about this critical issue can help to prevent organ trafficking and protect vulnerable populations. Education and awareness are essential in navigating the complexity of organ transplantation and the obstacles faced by organ trafficking. Raising knowledge about the importance of organ donation, the ethical implications of organ procurement and distribution, and the dangers of organ trafficking can aid individuals in making educated decisions. Educating the public can also prevent illicit organ trade involvement and foster a culture of generosity and ethical organ donation. The public may contribute to a better educated and compassionate approach to resolving the severe scarcity of organs and the threat of organ trafficking by understanding the intricacies and ethical issues involved in organ

transplantation.

To summarise, organ transplantation is a complicated profession with medical, ethical, and logistical challenges. Organ scarcity, moral quandaries, and medical problems are all inherent in this lifesaving practice. Simultaneously, organ trafficking threatens the very principles of ethics and humanity that organ transplantation looks to uphold. To address these issues effectively, solid legislative frameworks, international collaboration, and public awareness are needed. By addressing these issues as a group, society may move towards a more ethical and fair method for organ transplantation, making sure the gift of life is given and received with the highest care, compassion, and integrity.

