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“ ORGAN TRAFFICKING : THE HIDDEN ASPECT OF HUMAN TRAFFICKING “

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Course – LL.M

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Acknowledgement

I would like to express my special thanks of gratitude to my mentor Dr. Mayank Mishra as well as my faculty of Research Methods and Legal Writings, Dr. Vijay Kumar Singh who gave me the golden opportunity to do this wonderful project on the topic Organ Trafficking. I am grateful for their invaluable guidance throughout my research work.

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TENTATIVE SCHEME OF THE SEMINAR PAPER

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Abstract

Organ trafficking is unlawful human organ sale and transplantation, involving illegal organ harvesting from living or deceased persons. There are various causes of organ trafficking, mainly absence of stringent legislation, illiteracy, high demand but limited supply and poverty. Like other forms of human trafficking, it is a severe crime, gravely violating human rights all around the World. It has also increased significantly in India. According to WHO report, India is the world's largest exporter of human organs, and it goes without saying that the majority of these exports are associated with illegal organ trading. The lack of organ donors is one of the main issues and there is no technology that can help replace these organs, and as a result, many patients lose their lives while waiting for the transplants they require. When supply and demand are out of balance, crime rates for organ trafficking are increasing. In order to facilitate organ donation and transplantation procedures, the Transplantation of Human Organ Act (THO) was passed in India in 1994. In general, the act recognized brain death as a type of death and declared the selling of organs to be illegal, but it seems that there is a gap between the goals of the legal framework and the results achieved so far as a consequence of its implementation. This paper, therefore, tries to resolve the questions (A) What is to be blamed for the rise in the black market of human organs? (B) How can organ trafficking be stopped?

By the virtue of this paper, an effort has been made to comprehend the nature of crime of organ trafficking in India and regulations put in place to address such offences with obstacles in preventing India's organ trafficking notwithstanding laws like “the 1994 Organ Transplantation Act” being in force. The fundamental hypothesis of the current doctrinal based research is to emphasize that adequate cooperation is required between the central and the state governments to prevent organ trafficking and overcome socio-economic obstacles in India.

Keywords: Organ Trafficking; Trade; Criminal Offences; Right to Health; Fundamental Right

HYPOTHESIS

There is a gap between the goals of the legal framework and the results achieved so far, as a consequence of its implementation.

LITERATURE REVIEW

- **Evolution of the Transplantation of Human Organ Act and Law in India**

Agarwal, Sanjay K; Srivastava, Rakesh K; Gupta, Sudhir; Tripathi, Samidha

The Indian government has put laws in place to allow organ transplants there. In order to encourage organ transplantation, including dead organ donation, in accordance with the highest ethical principles, the Transplantation of Human Organ Act and related regulations were introduced in India in 1994 and subsequently updated in 2008 and 2011. We have provided a brief overview of the history and development of India's Transplantation of Human Organ Act in the hopes that those engaged in or in charge of this life-saving advance may find benefit in our knowledge of the process.

- **The Social Determinants of Organ Trafficking: A Reflection of Social Inequity**
Authors

Debra A. Budiani Coalition for Organ-Failure Solutions (COFS)

Kabir Karim Country Program Director, Egypt, Coalition for Organ-Failure Solutions (COFS)

The global reach and effects of organ trafficking have become clear. Social factors that influence the commercial living organ donation industry include poverty, vulnerability, destitution, and a system of exploitative transplant procedures. Transplant procedures can enhance social equity standards rather than taking advantage of the social factors that contribute to poverty, vulnerability, and destitution through exploitative health systems, as suggested by the WHO resolution on organ transplants and the Istanbul Declaration.

- **Organ Trafficking and Transplant Tourism**

The Role of Global Professional Ethical Standards—The 2008 Declaration of Istanbul

Danovitch, Gabriel M.; Chapman, Jeremy; Capron, Alexander M.; Levin,

Adeera; Abbud-Filho, Mario; Al Mousawi, Mustafa; Bennett, William; Budiani-Saberi, Debra; Couser, William; Dittmer, Ian; Jha, Vivek; Lavee, Jacob; Martin, Dominique; Masri, Marwan; Naicker, Saraladevi; Takahara, Shiro; Tibell, Annika; Shaheen, Faissal; Anantharaman, Vathsala; Delmonico, Francis L.

Human organ trafficking, commercialization, and transplant tourism were major factors influencing transplantation therapy by the year 2005. Poor persons in India, Pakistan, Egypt, and the Philippines were the most frequent donors of organs, followed by deceased organ donors in Colombia and executed criminals in China. The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, which includes a preamble, a set of principles, and a number of measures, was created in response in May 2008 by The Transplantation Society and the International Society of Nephrology.

- **Combating Organ Trafficking in India**
Sanjukta Bhattacharya

- **Human trafficking In India: An analysis; Vimal Vidushy**

This essay makes the case that the crimes connected to human trafficking that jeopardise the safety of those who are trafficked in India must receive special attention. As a result, it offers some preventive solutions to cope with the issue.

STATEMENT OF PROBLEM

Organ trafficking- a profitable global criminal trade is frequently a less acknowledged form of human trafficking among anti-human trafficking groups due to its complex and frequently covert nature. Human trafficking is mainly centred around sex and labour trafficking in the opinion of leaders, bureaucrats and policy makers. Organ trafficking, however, occupies a crucial position among globally organized crime groups due to strong demand of human organs and very low level of law enforcement for punishing them. Organ traffickers make money in secret, leaving behind harmful medical impact. It exposes vulnerable populations, also known as "donors," and first World beneficiaries, sometimes known as "recipients," to severe exploitation and lifelong health implications.

There is uncertainty about how this crime occurs while discussing organ trafficking. According to Global Financial Integrity (GFI), trafficked organs are used in 10% of all organ transplants,

including those for lungs, heart and liver. The World Health Organization (WHO) estimates that 10,000 kidneys are exchanged in the black market, globally, each year, or more than one every hour, making kidneys, the most prominent organ that is traded illegally. Once acquired, trafficked organs can be transplanted to recipients in the World's top hospitals in big cities, but covert operations are also frequently taking place in homes' surreptitious operating rooms. Traffickers plan the donor recruitment after identifying their weakness and the victims are not always thoroughly checked for their eligibility to be a healthy donor. Patients in dire need of an organ may become victim of a trafficker, who may be acting as a reputed representative of a benevolent organ matching organization. Financial exploitation is a major factor on both sides of this scenario. Organ traffickers may also engage in prostitution, labour or other types of human trafficking, in addition to trafficking of organs. There are several instances coming to light; where an organ donor may have been exploited on multiple levels, including sex, labour and organ trafficking.

This crime is also frequently described using the term "transplant tourism", which refers to a patient receiving an organ transplant from outside the country may have done so through the organ trade or another method. It has also increased significantly in India. According to WHO report, India is the World's largest exporter of human organs and it goes without saying that the majority of these exports are associated with illegal organ trading. Undoubtedly, the scarcity of organ donors is one of the main issues and there is no technology that can help replace these organs, and as a result, many patients lose their lives while waiting for the transplants they require. When supply and demand are out of balance, crime rates for organ trafficking are on an increase.

RESEARCH OBJECTIVES

Transplantation of Human Organ Act (THO) was passed in India in 1994 in order to facilitate organ donation and transplantation procedures. In general, the act recognized brain death as a type of death and declared the selling of organs to be illegal, but it seems that there is a gap between the goals of the legal framework and the results achieved so far, as a consequence of its implementation. By virtue of this paper, efforts have been made to comprehend the nature of crime of organ trafficking in India and regulations put in place to address such offences; with obstacles in preventing India's organ trafficking notwithstanding laws like "the 1994 Organ Transplantation Act" being in force.

RESEARCH QUESTIONS

This paper, therefore, tries to resolve the issues:

- What is to be blamed for the rise in the black marketing of human organs?
- How can organ trafficking be stopped in India?
- Whether there exists any loophole in the Indian law?
- What are the factors that make individuals vulnerable for being recruited to sell an organ?

RESEARCH METHODOLOGY

For this paper, doctrinal based research methodology is used.

PART-1

Introduction

1.1 Basic Information on Organ Trafficking

One of the most significant medical invention of the 20th century was organ transplantation. Ever since the first successful transplants in the 1950s, organ transplantation has saved and prolonged the lives of thousands of patients. Regarded as a risky and experimental procedure until the 1980s, today it is a worldwide practice, conducted in hospitals in almost 100 countries all over the world .¹ Over the past few decades, the survival rates of transplant recipients have increased dramatically. According to the Global Observatory and Database on Donation and Transplantation – the product of a collaboration between WHO and the Spanish National Transplant Organization - about 118,127 so-called solid organ transplantations (kidney, liver, heart, lung, pancreas, small bowel) were performed in 2013, the majority of which, about 79,000, were kidney transplants, followed by about 25,000 liver transplants.² Thus, it must be said that kidney transplantation is the procedure that is

¹ Y. Shimazono, "The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information," *Bulletin of the World Health Organization* 2007;85:955–962.

² According to the Global Observatory and Database on Donation and Transplantation – the product of a collaboration between WHO and the Spanish National Transplant Organization - about 118,127 so-called solid organ transplantations (kidney, liver, heart, lung, pancreas, small bowel) were performed in 2013, the majority of which, about 79,000, were kidney transplants, followed by about 25,000 liver transplants

performed the most frequently worldwide. There are two sources of human organs for transplants: deceased donors and living donors. Since human organs may only come from human bodies, any procedure involving organ transplantation must be performed in accordance with the highest ethical and professional standards.

Deceased Donation

The procurement of deceased donor organs is governed by professional, ethical, and legal regulations, which also specify the circumstances under which such organs are distributed. Deceased or post-mortem donation can take place from donors after brain death and after circulatory death.³

Living Donation

Living donation, particularly live kidney donation, has emerged as the most crucial alternative to meet the needs of the growing number of patients in need of transplantation due to the paucity of deceased donor organs. Other methods of live organ donation are feasible, but they include higher dangers for the donors and are hence less common.

1.2 Definition of Trafficking in person for the Purpose of Organ Trafficking

For the first time ever, organ trafficking was formally defined in the Declaration of Istanbul in 2008: "Organ trafficking includes transport, transfer, harbouring, recruitment, receipt of living or deceased persons or their organs by either fraud, coercion, force or any other illegal means. For money or wealth from third parties through such exploitations of potential organ donors."⁴

³ Donation after brain death can take place when the death of a patient is established after diagnosing brain death, meaning irreversible loss of brain functions. Donation after circulatory death takes place from persons whose death has been determined by so-called circulatory criteria. See for instance the critical pathway developed by Beatriz Domínguez-Gil et al., "The Critical Pathway for Deceased Donation: Reportable Uniformity in the Approach to Deceased Donation," *Transplant International* 24, no. 4 (2011). Donation takes place after death is determined, usually in controlled circumstances, i.e., after withdrawal of life sustaining therapies when a clinical condition is considered to be of an ominous prognosis and further treatment is deemed futile. It can also take place in uncontrolled circumstances

⁴ Council of European Convention against Trafficking in Human Organs, CETS No. 216, 2018.

The following is a list of the components of organ trafficking as defined by the Council of Europe Convention against Organ Trafficking:

- Removal of organs from living being or diseased person without obtaining the consent of such person or violating the domestic laws where such trafficking takes place,
- Using this organ for implantation,
- Sorting, transferring, importing, exporting, preserving and receiving such organs;
- Intentionally attempting to commit such offence or aiding in the mission of such offence,
- Policy stating or recruiting organ donors for monetary or commercial purposes,
- Offering and promising any undue advantages to any healthcare services or person related to the healthcare department to cause removal or implantation of a human organ in the illicit manner mentioned above.

The commercial transactions of a human organ are illegal under the law in India until and unless the Indian legal framework legally permits any organ transplantation.⁵

1.3 A market Trafficking a person for Organ Removal

Despite efforts to increase the pool of organ donors, organ shortage become a global issue. The demand for organs is exceeding the supply, making transplantation a victim of its own success. the Global Observatory on Donation and Transplantation informed that in 2013 there were circa 118,127 solid organs transplanted globally, indicating that this was an increase of about 2.98% compared to 2012 and that the number of transplants may have met only about 10% or less of the global needs. In the Eurotransplant region (see also 1.1), at the end of 2012 more than 10,000 patients were registered on the waiting list for an organ.⁶ According to the European Commission, in 2007, there were 65,000 patients waiting for a kidney transplant in the European Union; 25,000 transplants took place annually, 120,000 patients were on kidney dialysis. This resulted in a waiting time of 3-5 years, with a mortality rate of up to 30%.⁷ In the

⁵ Council of European Convention against Trafficking in Human Organs, CETS No. 216, 2018.

⁶ Eurotransplant International Foundation, "Annual Report 2012, www.eurotransplant.org/cms/mediaobject.php?file=AR2012.pdf

⁷ Commission of the European Communities, "Communication from the Commission to the European Parliament and the Council. Organ Donation and Transplantation: Policy Actions at Eu Level," (Brussels European Commission, 2007)

United States, according to the United States Department for Health and Human Services, there were, as of 6 January 2014, 120,999 candidates waiting for organs (77,073 of whom are active waiting list candidates), but only 10,587 donors registered in the U.S. as of March that year.⁸ According to a World Health Organization (WHO) report, India is the world's largest exporter of human organs, and it goes without saying that the majority of these exports are associated with illegal organ trading. Due to the significant organ shortage, desperate patients may look for methods of obtaining organs illegally, outside of the regulations governing transplantation. Organs' potential profitability rises along with demand, which encourages some people to trade and sell them. As a result, a black market coexists with altruistic systems of organ supply procurement to fill the need that altruistic systems are unable to fill. Some of the earliest accounts of organ sales and purchases were made by transplant specialists in the Gulf States in the late 1980s when they encountered patients who needed medical follow-up after receiving transplants of kidneys they had purchased in India.

More and more experts have been documenting the harmful effects of kidney transplants performed on individuals from different nations since the turn of the twenty-first century. The medical effects of so-called "transplant tourism" have been the subject of an increasing number of medical journal papers. A few "supply" countries, where organ suppliers originate (mostly from Asia and North Africa at the time), and "demand" countries, where recipients originate (primarily from North America, Europe, and the Near East), as well as nations where transplants occur, were recognised. In 2007, WHO estimated that out of all transplants worldwide, 5–10% were conducted illegally.⁹ In 2011, it was estimated that the illicit 'organ trade' generated illegal profits between USD 600 million and USD 1.2 billion per year.¹⁰ The security of national organ donation systems is seriously threatened by underground "organ markets," which also harms the public's trust in organ transplantation globally.

According to many surgeons in cities like Chennai, Bangalore, Delhi, and Mumbai, there isn't much information available on people whose organs are removed and the long-term impact on them. The locations of the transplant operations revealed that it was challenging to obtain the information and nearly impossible to identify the kidney seller after the procedure.

⁸ United States Department of Health and Human Services, "Organ Procurement and Transplantation Network," Available at optn.transplant.hrsa.gov (Accessed 6 January 2014)

⁹ Y. Shimazono, "Mapping Transplant Tourism," in World Health Organization's Second Global Consultation on Human Transplantation (Geneva 28-30 March 2007).

¹⁰ J. Haken, "Transnational Crime in the Developing World," (Washington DC: Global Financial Integrity, 2011).

The truth is that those kidney dealers typically come from metropolitan urban slums and other areas that are prone to poverty. This brought about the following finding:

- A greater percentage of women sell kidneys.
- In India, one way to pay off debt is by selling organs.
- The proceeds from the sale of kidneys are split equally between debt repayment and marriage, healthcare expenses, and child-related expenses.
- The husband frequently purchases alcohol with the money.

1.4 Reality of Organ Trafficking

The loss of an organ may have health repercussions that last a lifetime for both the donor and the recipient. However, this is typically set aside because the financial rewards for individuals engaged are frequently given precedence over this. Organ trafficking is a crime that results from a lack of availability and a strong demand for organs, and it is frequently unclear how this crime might take place.

Global Financial Integrity estimates that 10% of all organ transplants, including those involving the liver, heart, and lungs, are made possible by the use of trafficked organs. The kidneys are the organ that is illegally traded the most. 10,000 kidneys are trafficked annually, according to the WHO. More than one every hour, in other words.

Many nations forbid the sale and purchase of organs. The only place in the world where organ trading is permitted is Iran, and exclusively for Iranian nationals. Contrarily, very few regulations prohibit someone from leaving their nation to obtain an organ from someone else abroad. According to global financial integrity, it is estimated that the illicit organ trade conservatively generates between \$840 million and \$1.7 billion.¹¹

Even if banks find it challenging to identify these financial activities, it is not impossible. The following signs, when combined, could show suspicious behaviour as certain red flags:

- Various payment methods, such as massive money transfers and cash withdrawals in bulk,
- charity payments to medical tourism websites,
- Customers who are known to be ill are transferring a lot of money to various businesses and charities via medical tourism
- websites that provide transplant treatments abroad.

PART-2

¹¹ <https://www.who.int/bulletin/volumes/85/12/06-039370.pdf>

The first successful organ transplants in India was that of kidneys in Mumbai in 1967¹² It was anticipated that there would be a decline in organ trafficking following the passage of the 1994 Act. The measure really gave room for illegal organ trading, which led to an increase in corruption. Although it is stated in section 9(3) of the act that the authorising committee may allow organ transplantation based on an affidavit submitted by the applicant, it has since been discovered that there is no connection between the organ donors and the recipients.

The well-known case of Dr. Amit Kumar brought to light other issues and possible crimes. Amit Kumar allegedly used to charge around \$50,000 for each procedure and treated foreign workers as live donors in exchange for the promise of 3 lac rupees. Later, it was discovered that he performed 500 such unlawful transplants.

After extensive research, it was discovered that 2,000 Indians sell kidneys annually. Similar to this, an NGO by the name of Bachpan Bachao Andolon held the dead bodies of kids who were subsequently discovered to be having missing organs. The case was not reported by the authorities as organ trafficking and murder, but rather as kidnapping.

We do not know how many of the 50,000 or more children who go missing in India each year are abducted and subjected to operations against their will, as was noted in our story noting the fact that a child goes missing in India every eight minutes.

Overview of Person Involved

2.1 Recruiters (Brokers)

Similar to other forms of exploitation, vulnerable groups are frequently targeted by traffickers to become their victims. The victims of this kind of crime frequently lives in severe poverty. The recruiter's job would be to find people who are vulnerable and convince them to sell one of their organs, typically a kidney. Typically, recruiters would be quite adept at winning victims' trust in order to exert control over them. Recruiters are frequently chosen to carry out this task due to their ability to appeal to victims. They might share the same social and economic circumstances as the people they hire.

People may recruit family members or close friends when they are in extreme poverty.

¹² <https://www.who.int/bulletin/volumes/85/12/06-039370.pdf>

Additionally, recruiters frequently belong to the same ethnic group as their victims, which increases their ability to relate to and win the trust of victims. However, those from economically and socially disadvantaged areas are more likely to contact recruiters on their own after being tempted by newspaper ads, posters, or informants—which are typically funded by other trafficking organisers. One of the key players in the trafficking of people for the purpose of organ trafficking and other related crimes is frequently referred to as a broker in studies and media reports. There is no universally accepted definition of what qualifies as a broker, experts at the expert group sessions agreed. They did agree, however, that brokers would typically be seen as involved in a wider range of activities than just recruitment, such as serving as a point of contact between patients who are prepared to pursue an organ outside of the transplantation systems, organ suppliers who are chosen from underprivileged, impoverished backgrounds, and not to mention surgeons who are prepared to perform organ transplants in violation of legal and ethical standards. Brokers would need to be well-connected and linked with hospitals and other healthcare facilities in order to accomplish this. Brokers would be in charge of running a trafficking network and frequently have the power to establish organ trafficking pricing.

Brokers may directly hire regional organ providers or work with recruiters who, as previously noted, may disseminate information via newspaper advertisements and other channels. Some of these recruiters may even be persons who have been the victims of organ trafficking. Brokers would utilise these people to urge others to sell their organs since they know that frequently these people have little choice but to succumb to their exploiters.

Organ trafficking involves seemingly respectable but undeniably powerful individuals like doctors, nurses, politicians, and police. This makes it considerably more challenging to combat such offences. Regular human trafficking for the purpose of organ harvesting and the trading in human organs are both terrible injustices that, thankfully, are generally recognized.

2.2 Medical Professionals

Organ transplantation relies heavily on the expertise of specialised medical professionals like transplant surgeons, nephrologists (kidney experts), and anaesthesiologists. The involvement of transplant specialists and other medical workers in the trafficking of people for the purpose of organ removal, however, is arguably the one about which the least is known of all the actors. Additionally, nurses and other surgical team members' helpers may be involved.

The chief executive, medical director and three other doctors at a prestigious Indian hospital have been charged with offences related to illegal organ transplants after a kidney trafficking racket was uncovered, a police spokesman said.¹³ However, as was already indicated, experts claimed that surgeons who carry out illicit organ transplantations that favour financial gain above organ purchases typically do not face charges or are not extradited in response to demands from prosecutors. Despite legal advancements made in relation to the crime of human trafficking, the 2014 UNODC Global Report on Trafficking in Persons notes that there are still comparatively few convictions for this crime worldwide. The low number of convictions may reflect the difficulties of the criminal justice systems to effectively respond to trafficking in persons. Experts agreed that impunity also prevails especially in the field of trafficking in persons for organ removal and especially among those medical professionals that would be involved in the crime. It was mentioned that it still seems to present an obstacle for law enforcement and criminal justice to initiate investigations against members of a highly regarded medical profession.

2.3 Health Workers

In Organ transplantation the potential organ donors will have to undergo blood, urine and other medical tests to determine suitability for donation and if they are a match to a recipient. In this regard, other possible facilitators mentioned by the experts were laboratories and facilities that are involved in determining the match between suppliers and recipients. According to the experts, tests that need to be conducted prior to transplantation are often carried out in laboratories attached to the hospitals where the transplantations take place, but also in other laboratories. The experts informed that suppliers would often be either directly approached by or recommended to such facilities, or seek out such providers themselves. Laboratory technicians may engage in the effort necessary to bypass moral and legal obligations; they may knowingly assist brokers in matching a vulnerable, uninformed donor with a recipient. By informing potential organ providers and recipients of the advantages of organ sales and making connections with organ brokers, laboratories can also perform "brokering" tasks.

¹³ Nita Bhalla, Thomson Reuters Foundation

Such service providers might, for instance, be in the nation where the organ donor is from or the nation where the surgery is performed.

2.4 Organ Recipients

There have been domestic incidents of trafficking in people for the purpose of removing organs, but the cases when recipients travel to receive donor organs they have purchased appear to get the most attention. The World Health Assembly Resolution 57.18 on human organ and tissue transplantation of May 22, 2004, as well as the Istanbul Declaration on Organ Trafficking and Transplant Tourism both address the issue of "transplant tourism" and call on governments to take action to safeguard the most vulnerable and underprivileged populations. (The Declaration of Istanbul indicates that "travel for transplantation becomes transplant tourism if it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centres) devoted to providing transplants to patients from outside a country undermine the country's ability to provide transplant services for its own population.")¹⁴

It is challenging to draw the conclusion that the bulk of transplant patients who fly abroad did so to receive illegal or trafficked organs. Little is known regarding organ recipients who were charged or found guilty of participating in the trafficking of people for the purpose of removing their organs up until this point.

Recipients may actively participate in the trafficking of people for the purpose of trafficking organs. However, nothing is known regarding how much recipients are aware of the organ donors. The beneficiaries would undertake to cover all costs and fairly recompense the donors, but they might not do so directly with the organ supply. Instead, they might do it through a middleman, like a broker. The methods used by brokers to tell beneficiaries of the donor are also little understood. The recipients may have a general understanding of the extreme poverty the "donor" may be experiencing, but they may believe that by voluntarily donating their organs, for which they gave their fully informed

¹⁴ See "The Declaration of Istanbul on Organ Trafficking and Transplant Tourism.", mentioned above in chapter 2.5

consent and were compensated, the donor may be able to improve his or her living circumstances. The recipient might therefore view the agreement as mutually advantageous.

PART-3

Legal and other Instruments in India

The right against exploitation, which includes organ trafficking, is protected by the Indian constitution and is closely related to human trafficking. As previously stated, article 21 is fundamentally based on the rights to health and bodily integrity. Every Indian person has the right to live in dignity, according to Article 21. When someone violates the law by engaging in the kidnapping of children or the sale of an elderly person's organs for profit they could face penalties under both the Transplantation of Human Organs Act of 1994's provisions and Section 360 of the Indian Penal Code.

The Transplantation of Human Organs Act, which was adopted in 1994 and amended in 2014, governs organ donation in India. Despite the law's implementation in 1994 and updates in 2014, there are still many issues in the organ donation industry. Let's look back a little bit to the 1994 legislation that attempted to regularise the organ donation scenario and, in doing so, put an end to the then-existent, rampant organ trafficking in order to better comprehend the current issues in India's organ donation situation. Additionally, in order to provide for state-level oversight of organ donation, the Act attempted to unite all of India's states under a single regulatory authority. It was the nation's first law addressing organ donation. The measure addressed various areas of organ donation and transplantation and made the donation process simpler in an effort to facilitate organ donation. The legislation also aimed to prevent persons from needing transplants through unlawful organ trafficking and to ensure that donation procedures were legal.

Salient features of the 1994 bill on organ transplant were:

- A specific team of medical specialists known as the Authorisation Committee must be established in each state and union territory. The committee would be in charge of approving requests for organ transplants and keeping accurate records of the organs' supply.
- Surgery to remove organs from a deceased person's body is only permitted by a licenced medical professional.

- To be recognised as an accepted location for organ donation, hospitals must receive state authority permission.
- Before a person's organs are physically removed for transplant, a neurosurgeon must certify their brain dead. The Act was very clear that a neurosurgeon had to be present before a brain death determination could be made.
- If no direct family member of the deceased protested, a relative in charge could permit organ donation even if the deceased had not specifically given their approval.

2014: Amendments for Additional Improvement:

Numbers remained low even 20 years after the organ donation legislation was implemented. In India, there was a huge disparity between the number of donated and needed organs. People continued to fall victim to organised trafficking ring, which raised concerns about organ trafficking. In 2014, changes to the transplantation laws were made in light of these two main issues.

- The 2014 modifications allowed organs to be retrieved from any hospital with intensive care units and ventilators, so increasing the number of hospitals where organ donation and transplantation are permitted.
- The modified laws changed the requirement that a neurosurgeon be present to certify brain death, enabling any doctor or anaesthetist recognised by the relevant state authorities to serve on the board of medical experts for certification of brain death.
- If the person had not given previous consent, it was mandated that the treating physician contact the deceased's family and attempt to persuade them to approve the donation of the deceased's organs.

The Transplantation of Human Organs Act of 1994 offers a legal structure that, in principle, should make it possible for someone who needs an organ to acquire one. The Act aims to promote and control organ donation among close family members out of love and affection. Organs may be donated by consent in cases of deceased donors and the kin of the deceased provided the potential donor has no objections and has never raised any objections in the past. Such a voluntary donation is useless if the deceased person's family objects in any way.

Section 9 of the Act makes provisions for the transplantation of organs between closerelatives with theauthorising committee's approval.

Similar to this, the Act's restriction misses the link between organ trafficking and rising need for organ donation.

To fix the problems of the 1994 Act, an amendment to the Act was passed in 2011. The provisions of this new Act also permit living individuals to donate their organs. Doctors were instructed to discuss the possibility of organ donation with their patients if they didn't, they risked being punished in accordance with the new law.

Even with this 2011 revision, the new Act cannot be praised because the critique persisted in some form. Because the authorising committee's role was not adequately explained, there wasnot enough infrastructure available to secure the majority of this law's provisions.

PART-4

Good practice responses and recommendation

4.1 Prevention

- As with all types of human trafficking, combating organ trafficking necessitates addressing its underlying causes in order to lessen people's vulnerability to becominga victim of it in the first place. States should take action to address issues like poverty,underdevelopment, and lack of fair opportunity that put people at risk for trafficking. Given that poverty appears to be a common factor in the trafficking of people for the purpose of obtaining organs, it is important to alleviate poverty through empowering and long-lasting programmes that are aimed at the populations most likely to be recruited as donors.
- The demand for illegally obtained organs should be taken into consideration while developing strategies to stop the trafficking of people for their organs. States would have to encourage healthy lifestyles, for example, in order to lessen demand brought onby organ failure.

- The transmission of thorough information to possible organ recipients, family members of deceased (potential) donors, and potential donors should all be included in the measures. The dangers and advantages of live kidney donation should be made clear through awareness-raising campaigns for both potential donors and recipients.

4.2 Legislation

Lack of implementation Concerned Experts

The lack of knowledge and information on the status of transplant is one of the main reasons why many people still have a negative opinion of organ donation. According to the amendment, each state must establish a state-appointed authority and advisory group to oversee the organ donation situation in all of the state's hospitals. Such a body doesn't exist in the majority of states, and where it does, as in Tamil Nadu and Kerala, data collection practises vary.

As stated in the amendment, states must appoint authorities and advisory groups in order to streamline the organ donation process. People never learn the status of organ availability because many states do not yet have such committees, which has a negative impact on organ donation and transplantation rates.

Another significant cause for concern is how few doctors approach the relatives of the deceased to ask for their permission to donate organs. According to Dr. Arpita Ray Chaudhury, Joint Director of the Regional Organ and Tissue Transplant Organization (ROTO), many private hospitals do not keep a record of whether a deceased person's family has been contacted or whether they have categorically stated that they do not want to donate the deceased person's organs.

Many doctors do not approach the family and inquire about any objections to organ donation, even though it is required by law to do so. Families are still unaware how they can give a deceased member's organs. While it's crucial to educate people about organ donation through campaigns, doctors also have a significant impact on public awareness. Doctors should take a more active part in the role that the amendment wants them to play.

The persistent issue of illegal organ trade is brought on by years of undetected organ transplants, which has led to the practice's uncontrollable growth. However, the fact that some of the 2014 revisions have not been implemented also contributes to this, as some of the key suggestions in the new amendment have not been followed by hospitals and state governments.

Organ donation is not merely a medical concern, hence India is still in the early phases of regularising it. The improvement of organ donation in India depends on a number of factors, including the economy, the function of state governments, and the function of hospitals. Organ donation still relies heavily on private institutions because government hospitals are frequently understaffed and under-equipped. This prevents a lot of individuals from learning about the process of organ donation.

PART-5

Conclusion

Human trafficking and organ trafficking continue to increase at an alarming rate despite the fact that there are 0.6% of officially registered donors for every 1 million inhabitants. There is a requirement for between 150,000 and 200,000 kidney donors, yet only 3,500 people may now have their needs satisfied through authorised means. As a result, it is possible that organ trafficking in India would grow more in the years to come. Since health is regarded as a state concern, a review of the Acts of 1994 and 2011 reveals that they do not apply consistently. In India, there are a large number of impoverished individuals with end-stage kidney disease (ESRD) who lack access to any form of care. In a nation like India, the early detection and management of diabetes and hypertension can avoid kidney failure and be more cost-effective. The biggest beneficiaries of the kidney trade, in addition to the kidney buyer, are the brokers, the doctors, the transplant centres, and the pharmaceutical companies.

Most organ trafficking occurs at "five star" medical facilities that provide transplant tourism services. There are several flaws in the law (THOA), and putting in place a system that enables people in the kidney market to maintain the market (even though the government has enacted both).

Additionally, it has opened up opportunities for the illegal trade in organs in India, which calls for the passage of a national law that the Parliament can carry out by using Sections 249 and 252 of the Constitution.

Additionally, the concept of family consent has been introduced in cadaver donation instances, coupled with the approval of the person in charge of the dead corpse, making the consent of the deceased irrelevant. Despite a deceased person's will making provision for organ donation, it will be challenging in India to obtain the family's approval due to pre-existing religious and superstitious beliefs. Since the family typically does not permit the removal of organs from a deceased family member, notwithstanding the deceased's agreement, the rate of organ donation has decreased since the passage of the Act of 1994.

Since it is the deceased's right to determine the disposition of their body, the law should place more emphasis on their consent because it would be against their rights if they elected to donate their organs after death just to win their family's moral support. Success in this area must continue if the law is to be properly implemented and the number of organ donors is to rise.

Organ donation should be promoted to the general public and to healthcare professionals through coordinated campaigns. Along with the Indian Society of Nephrology, which would be a helpful partner in this effort, we also need to involve the media, religious leaders, and educational institutions.

Despite all of this, the Indian government must activate and improve its anti-human trafficking units (AHTU).

As transnational issues, the elimination of the organ trade and trafficking calls for international cooperation. Wealthy nations must inform their populations, particularly medical professionals, about the significance of adhering to regulations banning the sale and trafficking of organs and promoting selfless live and deceased donation.

Increasing awareness of organ donation is crucial to addressing India's rising demand for

transplants. The law must clarify the Authorising Committee's role in order to reduce corruption. Transparency in all medical procedures is also essential for identifying the network behind organ trafficking.

