



Organ Trafficking and Transplantation in India and Prevention

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Abstract: A major global issue, human organ trafficking has emerged as one of the worst and most pervasive ways that economically disadvantaged people's rights, particularly those of women and children, are violated. After illicit commerce in drugs and weapons, human organ trafficking is regarded as the most significant unlawful worldwide trade. Therefore, the sale of human organs can potentially harm both life and health in addition to violating the victim's fundamental rights, human security, freedom, and a dignified existence. Organ trafficking is reportedly an organized crime that has grown significantly in India for various reasons. In India, the majority of people continue to live in extreme poverty, and these crimes have become increasingly serious and connected. Huge demand for organs to save lives and a sharp drop in supply are two other important factors contributing to the surge in such crimes. This article will discuss all the causes of organ trafficking in India as well as the laws that have been put in place to stop such acts. Although laws have been passed in India, there is still a disconnect between the rules and the actual results. The goal of this essay is to discuss the nature of organ trafficking as a crime and the legislation that addresses it.

Keywords: Organ Trafficking, illegal organ transplantation, organ trade, legal framework, human trafficking, violations of human rights.

Introduction:

Organ and tissue transplantation has changed over the past 30 years from an experimental operation conducted only in highly developed countries to a therapeutic treatment conducted in hospitals and clinics around the world due to medical developments and surgery. Due to a shortage of available organs, a worldwide organ market has emerged, with kidneys becoming the most traded item. India is a fertile environment for this trade as a result of poverty, enormous inequality, and pervasive corruption. There are many people who are extremely poor who view the sale of a kidney as a way to earn money, and there are rich patients who are in need of a kidney who can have the surgery done in some of the top medical facilities in the world. In several Indian states, the sale of organs was made illegal by law in 1994, but the illegal trade for organs still exists today. Transplantation has evolved from a life-saving therapy to a brilliant example of inter-human cooperation thanks to the numerous significant clinical and scientific advances made by committed medical professionals as well as innumerable acts of kindness by organ donors and their families.

The international trade in human organs is centered on South Asia. At least 10% of all transplants, according to the World Health Organization (WHO), are performed by "medical tourists." These visitors hunt for local brokers who can help them purchase various organs for pricey prices. At least 15,000 times a year, organ trafficking is done in this way. India is a sought-after place because harvestable organs are consistently and easily accessible there (Hendry, 2010). Several reports of human trafficking for the purpose of harvesting organs and of wealthy patient tourists travelling to developing nations to buy organs from the disadvantaged people have cast a shadow on these achievements. In 2004, the World Health Organization urged its members to "take measures to protect the poorest and most vulnerable individuals against transplant tourism and the sale of tissues and organs, including attention to the greater problem of international trafficking in human tissues and organs." The World Health Organization (WHO) explicitly notes in its statement on the sale of organs that it contradicts both its own constitution and the Universal Declaration of Human Rights: "The human body and its parts cannot be the object of commercial transactions."

Therefore, it should be illegal to give or accept payment in exchange for organs. Medical professionals are advised by the WHO to refrain from organ transplants "if they have reason to think that the organs implicated have been the subject of commercial transactions."

Review of Literature

American Journal of Kidney Diseases (AJKD), “*Organ Trafficking: Global Solutions for a Global Problem*”, (2009) written by Tazeen H. Jafar has made valuable contribution in the field of human organ trafficking. The author states that organ trafficking in economically vulnerable population (specially, third world and developing countries) constitutes one of the most egregious violations of human rights. It violates the fundamental right of life and dignity and further violates the right to health and health care, liberty and security of the person. Now organ trafficking is considered as the one of the largest illegal source of profit for organised crime, behind only drugs and guns.

Groningen Journal of International Law, “*Trafficking of Human Beings for the Purpose of Organ Removal: Are (International) Legal Instruments Effective Measures to Eradicate the Practice*” (2013), Written by Alexis A. Aronowitz and Elif Isitman that Organ trafficking is perhaps the most obscure form of human trafficking. The confluence of organised crime, underprivileged organ donors, ill patients, and dishonest medical professionals makes this a global issue with transnational dimensions. This article examines the global trends in organ trafficking while noting the harm done to victims on a physical and mental level. The data on organ transplants and the trends in organ trafficking are analysed, as well as the social, economic, and legal aspects of this kind of crime.

Research Methodology

The study is based deskwork with the help of literature survey and documentary analyses on the basis of research data collected from primary and secondary sources. Primary sources include government documents, bilateral treaties, United Nations Development Report, archives and so on. Secondary sources include books, journals, newspapers, internet and so on.

Definition and nature of organ trafficking

According to the “**Istanbul Summit, (2008)**”, Trafficking in people for organ harvesting involves the solicitation, transportation, transfer, harbouring, or receipt of individuals for the purpose of organ harvesting through the use of threats, coercion, force, abduction, fraud, deception, abuse of power or a position of vulnerability, or the payment or receipt of benefits in exchange for the cooperation of a person in a position of control (The declaration of Istanbul, 2008).

Organ trafficking includes the following components, according to the Council of Europe Convention against Organ Trafficking:

1. The removal of human organs from either live or deceased people without the agreement of those people or in violation of local laws where such trafficking occurs constitutes organ trafficking
2. Implanting these organs for medical purposes;
3. Includes tasks including receiving, importing, exporting, transferring, maintaining, and storing such organs;
4. Intentionally seeking to commit such offences or aiding in their commission;
5. Additional offences under this category include enticing or recruiting individuals to donate their organs in exchange for money, benefits, or favours from a third party;
6. In order to facilitate the illegal removal or implantation of human organs in any manner as described above, it even includes offering, promising, or providing undue advantages to individuals providing healthcare services.
7. Last but not least, it also involves receiving or demanding any undue advantages from such healthcare personnel.

Any type of commercial use of human organs in India is prohibited by law until and until organ transplantation is expressly authorized by the Indian Legal Framework.

Indian legal framework on organ trafficking and transplantation:

The right against exploitation, which includes organ trafficking and is closely related to human trafficking, is protected by the Indian constitution. As was already said, an essential component of article 21 is the right to health and the right of a person over their body. Every Indian citizen has the right to a dignified life under Article 21 (Basu, 2012). If someone engages in the kidnapping of children or the exploitation of the elderly for their organs, or if they perform the crime themselves. Along with the provisions of the Transplantation of Human Organs Act of 1994, they may be punished under section 360(3) of the Indian Penal Code (Malhotra & Goel, 2013).

The Transplantation of Human Organs Act of 1994 provides 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 (Malhotra & Goel, 2013).

There were several issues with the Act of 1994 that were addressed by an Amendment Act that was passed in 2011 and whose provision was raised with West Bengal. This new Act enabled living persons to donate their organs (Parikh, 2020). Doctors must notify their parents about the possibility of organ donation before they decide whether to refuse or consent to those contributions. According to this Act, failing to do so could result in severe penalties for doctors. Since the role of the Authorizing Committee was still unclear and since public hospitals in rural areas lacked the necessary infrastructure, many medical experts did not understand brain death. (Sahay, 2020).

Indian Organ Trafficking Scenario

The well-known Dr. Amit kumar case brought to light other issues and wrongdoings. Foreign workers were treated as live donors with the possibility of receiving 3 lac rupees and Amit Kumar was said to charge nearly \$50,000 for each operation. He performed 500 of these unlawful transplants, which were eventually discovered. Following extensive investigation, it was discovered that 2,000 Indian s sell kidneys annually. Similarly to this, an NGO by the name of “Bachpan Bacho Andolon” stored the dead corpses of infant who were subsequently discovered to be missing organs. The authorities declined to classify the incident as organ trafficking or murder and instead listed it as an abduction (Kaushik, 2022).

We simply 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 (Kaushik, 2022). 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. Globally rising demand for human organs causes a large increase in organ-related crimes, which rise in direct proportion to violations of human rights, especially in the most poor and marginalised parts of society.

Shortage of Organ: A Global Issue

The growing global need for replacement kidneys, which is being driven by the growth in diabetes and other diseases, is being exploited by traffickers, according to information collected by a global network of doctors. According to a World Health Organization (WHO) report, India is the country that exports the most human organs worldwide, and there is no question that the majority of these organs are traded illegally. The global demand for human organs is rising, and crimes involving the trade of human organs are rising considerably in direct proportion to abuses of human rights especially among vulnerable and marginalised societal groups (Shroff, 2009).

Because there isn't enough law enforcement in certain countries and there aren't enough laws in others, those who give cash incentives to poor people to donate a kidney have it too easy. According to WHO data, 73,179 (68.5%) of the 106,879 solid organs that were transplanted in 95 member states in 2010—both legally and illegally—were kidneys. But according to the WHO, those 106,879 surgeries only met 10% of the world's needs. (Guardian News and Media, 2012, May 27).

In the United States, the gap between the high demand and inadequate supply for kidneys has grown over time. Due to this, a lot of patients now travel abroad for transplant surgery. India, Iran, China, Pakistan, the Philippines, Brazil, Turkey, Moldova, Ukraine, Russia, Bulgaria, and Romania are a few of the nations with lax regulatory frameworks that have yielded to market forces.

Recently, officials from the international transplant community gathered in Istanbul to talk about the expanding transplant donation industry and transplant tourism. Transplant commercialism was characterised as a policy or practise when an organ is viewed as a commodity, including when it is purchased, sold, or used for financial advantage. According to a Lancet editorial on the subject, "The success of transplantation as a life-saving treatment does not require—nor justify victimizing the world's poor people as the source of organs for the rich."

This approach seems to be the answer to our problem of an organ shortage as well as a way to put an end to the organ trade in India, where the rate of dead donation is pitifully low. It would be wise to look upon a practical substitute for this changeover or donor swap in living transplants (Manzano, 2019).

Conclusion:

The police, doctors, nurses, and other supposedly respectable but obviously powerful professionals are also involved in the trafficking of organs. As a result, it is now even difficult to combat these offences. Human organ trading and trafficking in actual human for the purpose of organ harvesting both occur frequently. (Shroff, 2009).

The number of people who are putting their names on the waiting list for a kidney transplant is outpacing the number of organs that are needed on a global scale. Organs have been more commercialized as a result of rising demand, particularly in countries with lax regulatory structures and high rates of poverty (Kaushik, 2022).

As nations like the U.S. and Canada adopted their national laws on human trafficking, they did not include organ trafficking as a type of the crime. However, several states in the United States, including Massachusetts, have their own state statutes on human trafficking that also cover organ trafficking.

India accounted for 1% of all road vehicles and 6% of all road accidental deaths in 1998. In 2006, these accidents reached a 10% increase. Road accidents occur on average every year at a rate of about 90,000. In 2005, Tamil Nadu alone reported 13,000 fatalities as a result of traffic accidents (Kaushik, 2022). Potential organ donors in India are only deceased in automobile accidents, which account for about 40–50% of all fatal road accidents worldwide. Additional brain deaths may arise from other conditions such tumours and subarachnoid haemorrhage. There would be no need for a living individual to give even if 5% to 10% of all of these deceased patients become organ donors. In addition to facilitating kidney transplants, promoting the dead donor programme would also benefit liver, heart, pancreas, and lung transplants in the nation. (Shroff, 2009).

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