

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 2 | Issue 1

2020

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Organ Trafficking

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ABSTRACT

There are so many laws which tend to curb the illegal trade in organs but still the practice is very common and it is still going on. The organ and transplantation Act 1994 which aimed at banning or putting a bar on commercial transplantations has not been much progressed this is mainly due to unbalanced donors and recipient ratio. The recipient ratio is comparatively very high whereas there is shortage of donors. The main victims are the poorer sections of the society, victims of human trafficking, who are exploited due to lack of resources and they are not even paid for the same and also the people who are unaware of the post health problems. This is one of the biggest challenges which needs to be solved and to be looked upon and the laws regarding organ transplant should be more tightened and has to be looked and worked upon.

I. INTRODUCTION

We are always been taught about humanity and the greatest teaching of humanity is to serve mankind it is said that money can do almost everything in this mortal world but sometimes millions of dollars is of no use where a drop of blood is required for saving lives that's the reason organ donation is called one of the biggest and most valuable donation of human capability. Organ donation is donating biological tissue or an organ of the human body, from a living person or a deceased person to a living recipient who is in need of transplantation.

Organ transplantation is one of the most remarking medical growths of the past century. Human organ transplantation started way back in 1962. Initially it was unregulated but later on the Act governing transplantation was formulated in 1994 which aimed at prevention of commercial dealing in organs. The Act was initiated at the request of Maharashtra, Goa, Himachal Pradesh which was later on accepted by all the states except Andhra Pradesh and Jammu & Kashmir. The Act has been subsequently amended in the year 2011 and new rules came into force in 2014.

II. PURPOSE

The Organ and Transplantation Act, 1994² which aimed at banning or putting a bar on

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²The Transplantation Of Human Organs And Tissues Act, 1994

commercial transplantations has not been much progressed this is mainly due to unbalanced donors and recipient ratio. The recipient ratio is comparatively very high whereas there is shortage of donors. The main victims are the poorer sections of the society who are exploited due to lack of resources and they are not even paid for the same. It is quite shocking to see that in the name of organ donation, many activities like organ trafficking or illegal trade of organs have been practiced in our country for more than a decade. Transplantation of human organ mainly kidney, liver lobes and single corneas has created an illegal marketing in country. Due to poverty and loopholes in existing legislation, illegal trading of organ has been continuing secretly and it should be disclosed and spread awareness to general public.

III. MODUS OPERANDI OF ORGAN TRAFFICKERS

The brokers and the medical health professionals play a vital role in the success of the illegal act. Therefore one can also conclude by saying that it also means that the money flow involved in trafficking comes from the patients or the recipients. Despite countries best effort to reduce illegal marketing in organs India has been the hub for organ trafficking. It is considered as one of the major criminal offence like human trafficking, murder, rape many more. Wealthy buyers and brokers manipulates poor and illiterate people to sell their organs by making false and fake promises like high prices, job to jobless people and many other. In India kidney transplantation firstly started in 1970, since that time India has been a hub for transplantation. In last few decades it has been noticed that struggle for deceased donation programs for organs was evolving in India and many kidney scandal cases has been witnessed in last few years. The main victims were the women and children who did not have sufficient resources and most of the people were from rural part of the country. The most targeted age group were 18 and 28 they are being subjected to coercion, fraud and sometimes deceived. Most of them are taken to cities with the promise for giving them the job opportunity and they are then deceived in the name of employment and sometimes for some amount for which they are not even paid as per the promised term.

IV. SHORT HISTORY IN TRAFFICKING OF ORGANS

Foreign patients especially from Middle East used to come to India for having their organs transplanted. Most of them were from the Gulf States, the poor Indian citizens were highly exploited. They did not have any clue about the commercialization of the organs and this is how organs were transplanted and it reports were such that it first took placing in 1980³.

³. Michael Bos, *Trafficking in Human Organs* (Brussels: Policy Department, Directorate-General for External Policies, European Parliament, 2015), 25,

The numbers of deceased donors increased to take care of organ shortage. The few deceased donations that in India, despite the Transplantation of Human Organ Act (THO) neither has the commerce stopped nor have been taken place are due to efforts of few Non-Government Organizations (NGOs) or hospitals that are highly committed to the cause. Recently, the government has come under much criticism by the public and media and added few legislation in the form of a gazette to curb the illegal unrelated organ donation activities in the society and tried to plug out the loopholes in the Transplantation of Human Organ Act (THO). To a large extent, the failure of Transplantation of Human Organ Act (THO) has been because of the way it has been interpreted and implemented by authorities and hospitals.

ORGAN TOURISM

Organ tourism means when the recipient travels to foreign countries in search of an (illegal) transplant. *“The United States for Organ Sharing has defined transplant tourism as the purchase of the transplant organ abroad that includes access to organs while bypassing rules, organs, or processes of any or all”*⁴. It is usually believed that in transplant tourism the organ is obtained through a more or less from a person who has consented willingly to having his kidney removed. There is no need of coercion, fraud in the deception of the organs. These vendors are usually impoverished local inhabitants, and are not transported across boundaries. In view of the poverty and vulnerability of the vendor, the consent for organ removal cannot be seen as based on voluntary decision. There are frequent deception and fraud in the payment, and brokers and recruiters target these vulnerable populations. Also the lack of post-operative care for the vendor strengthens the element of exploitation.

THE BACKGROUND OF RECIPIENTS

Buyers who buy organs are well aware of the nature of the act that they are doing an illegal act. Due to numerous cases of organ trafficking the background of the recipient can be well established:

- long hours of waiting list which increases the risk of dying in dialysis
- do not want to seek the help of the relatives for live donations
- low access to organ transplantation in the domestic territory
- Due to some of the social norms and myths of the society.

[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/549055/EXPO_STU\(2015\)549055_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/549055/EXPO_STU(2015)549055_EN.pdf).

4. UNOS board further addresses transplant tourism. June 26, 2007. Available at: <http://www.unos.org/news/newsDetail.asp?id=891>. Accessed August 05, 2020.

- Going for pre-emptive organ transplant before dialysis

BACKGROUND OF THE DONOR

- Mostly from developing countries
- Illegal immigrant, a refugee
- Illiterate
- Belongs to poor families
- less medical knowledge
- unaware of the post health problems
- Victims of human trafficking

V. POSITION AND RESPONSIBILITY OF THE MEDICAL PROFESSIONAL

The Act could not be possibly performed without the help, consultation and guidance of the medical professional and practioners such as cardiologists, gastroenterologists etc. in which the main recruiter or the broker is found to be the Surgeon. This health professional creates a network and they are fully aware about the nature of the act they are doing.

- It is sometimes possible that the Lab technicians who are performing the act in authorised facilities may not be aware of the nature of the act.
- Professionals who are taking care of the post treatment are generally not the part of criminal network

There has been various instances where the persons mentioned above have not been acquitted because they had no men's rea or guilty mind they were totally unaware about the criminal act

BROKERS

Broker is a person who acts as an intermediary between the buyer and the seller and he is the one who creates the network. He possesses basic medical knowledge which further creates a network where the illegal transplantation is carried on. He is the main person involved without whom the act cannot be done because he has direct access to the clients as well as person involved in doing the surgery. The recipients and the donor come in contact with the help of the broker either through internet or orally by word of mouth in search of an organ.

LOCAL RECRUITORS

Local recruiters are the persons who generally lives in the society among us, they are not the outsiders they are the one who mingles up with the society and thereby come to know the needs

and wants of the society, the brokers appoints such recruiters because it not possible for a broker to find out about the needy ones and the donors therefore they play a huge role in getting the clients. They operate within the territory who are hired to find out the identity of the actual organ sellers/suppliers. Recruiters (or scouts) are usually operating within one country or specific geographical area. One never comes to know that the main culprit is sitting in one's own house they could be one's relative, corrupt police officers etc.

It is estimated by the Global Financial Integrity (GFI) that ten percent of all organ transplants includes heart, lungs and liver are trafficked organs. Among these the most illicitly traded organs are kidneys, were successful recruited, resulting in a transplant. It is estimated that 10000 kidneys are being traded in the black market every hour according World Health Organization (WHO).

Financial exploitation plays a key part in this whole scenario. In addition, organ traffickers could also be involved in other forms of human trafficking, such as sex and labour trafficking. Cases are emerging where an organ donor may have been a victim of sex trafficking and/or labour trafficking as well as a victim of organ trafficking, creating a multi-level equation of exploitation.

Buying and selling of organs is illegal in most of the countries to which Iran is only the exception where the trading is legal but this is limited only to its residents. There are few laws that restrict an individual from obtaining an organ from someone from another country.

In the case of *Dr. Parveen Kumar Sareen vs. State of Punjab*⁵ on 16th October 2016, trade of human organs was going on in Amritsar wherein innocent persons were induced into parting with their kidneys in lieu of some amount and which used to be sold at hefty prices to rich patients. The entire scam was being run by some doctors in connivance with some mediators.

The facts of the case were such that one Mulkh Raj Goel whose both kidneys had failed had contacted "kakkar" Hospital at Amritsar where they negotiated it for 2.5 lakhs for providing him a kidney of a donor namely Sudesh kumar who was a labourer whose kidney was taken out for a petty amount and was transplanted in the body of the said recipient. However, he was not provided adequate post-extraction treatment and consequently he expired

In the case of *Ratnakar Peddada and another vs. State of Telangana*⁶ on 22 June, 2018

It was argued that the object of the act is not to prohibit, but to see the illegal transplantations of organs. Section 9 of the Act, provides certain restrictions and under sub section 3 of the said

5. Dr. Parveen Kumar Sareen vs. State of Punjab, on 16 Oct., 2018

6. Ratnakar Peddada and another vs. State of Telangana, (2018) (5) ALD 617

provision, where the donor is not the near relative of the recipient such human organ or tissue shall not be removed without the prior permission of the Authorization committee. What is prohibited is the commercial transactions between the donor and the recipient. However donations offered by love and affection even amongst those who are not close relatives, is permitted but prior approval by the Authorization committee would be required. If the committee is satisfied that no commercial transaction is taking place between them It shall permit for the same.

There are so many laws which tend to curb the illegal trade in organs but still the practice is very common and it is still going on. The organ and transplantation Act 1994 which aimed at banning or putting a bar on commercial transplantations has not been much progressed this is mainly due to unbalanced donors and recipient ratio. The recipient ratio is comparatively very high whereas there is shortage of donors. The main victims are the poorer sections of the society who are exploited due to lack of resources and they are not even paid for the same. This is one of the biggest challenges which needs to be solved and to be looked upon and the laws regarding organ transplant should be more tightened and has to be looked and worked upon.

VI. THE GURGAUN TRAFFICKING CASE, INDIA

Charges filed against the Kumar brothers and the close associates included: causing grievous bodily harm, wrongful confinement and criminal conspiracy. One of the biggest and highlighted cases of kidney scandal came to light in 24 January 2008. Several people were arrested for illegal transplantation of kidneys in Gurgaon. This scandal was running by accused Amit Kumar for more than seven years he was an unqualified surgeon who had obtained a degree of bachelors of Ayurvedic medicine and surgery (BAMS) accused with his brother Jeevan Kumar and other associates started a hospital in Gurgaon where they used to carry out the business of illegal kidney transplantation and this was being carried out from 1999 to 27 January 2008. He trained himself in the field of kidney transplant by associating with the doctors who are trained in this field. The accused started kidney transplantation by his own in 1994 in Mumbai and many cases were registered against him. Accused ran away from Mumbai and in 1995 he reached Jaipur where he carried out the same business of kidney transplantation. Regarding this 3 cases were registered. After that he shifted to Delhi to carry out his illegal business. Accused Amit Kumar with his brother Jjeevan Kumar plans a criminal conspiracy they started influencing innocent and poor people and fraudently remove their kidneys through surgery and plants the same in the bodies of recipients for a consideration of huge amount. They were also running a guest house at Gurgaon where they used to keep their recipients

before and after the surgery operated. Medical council of India confirmed with their reports that the accused Amit Kumar was not registered as practitioner of modern medicine. Considering the prima facia case he was charged under section 3 and punishable under section 4 of PML Act.

VII. CONCLUSION

Today the increment in organ trafficking is still unknown that how many transplants are performed annually. Demand for solid organs is more than the demand of for the organs available from deceased donors. In India organ trafficking is increasing day by day around 2 lakh people need a kidney every year but only around 30% of demands get fulfilled. Organ trade mainly took place in developing countries where hospitals are advanced enough to offer transplant services. The demand and supply gap for donating organs paves the way for illegal transplant and trade of human organs. Our society is also a cause behind increasing in number of illegal organ trafficking. Many a times we don't bother about our laws and most of us ignorant about the law. We do not initiate ourselves to engage into such matters that we should aware the poor and illiterate people to avoid such kind of practices. The issue of organ transplantation should deal sensitively. The value of life after death should be in knowledge of everyone. The awareness regarding organ transplantation in a legal and positive way should be spread in society and tell them .

“Don't take your organs to heaven for god he well knows they are needed here for others.”

VIII. RECOMMENDATIONS

1. A proper framework shall be construed.
2. Better coordination with the member states
3. Organ availability shall be increased by convincing the family
4. Proper education should be provided
5. Spread awareness about the transplantation
6. There should be transparency in investigation procedure
7. Instead of penalising the victims proper legal and medical aid shall be given
8. Combating money laundering.
