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# ORGAN TRAFFICKING: A LESS DISCUSSED ASPECT OF HUMAN TRAFFICKING

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## ***Abstract***

*One of the life-saving discoveries of recent times is organ transplantation. The more lives from organ transplantation are rescued, the more people expect to rescue themselves from organ loss at the last stage. The current situation is, the organ requested exceeds the organ trafficking. Thus, being the root cause of the worldwide illicit organ trafficking. Living donors are either forced to donate or able to do so, as promised by intermediaries, for funds or work opportunities. The offense of trafficking in organs is multifaceted and ethically false. This paper titled "Organ Trafficking: A Less Discussed Aspect of Human Trafficking" is an effort to examine the present organ trafficking situation and the story of the Indian side of organ trafficking.*

**Keywords:** *Act, Donor, Human Trafficking, Laws, Organ Trafficking.*

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## **I. INTRODUCTION**

Human trafficking is recognized as one of the most dangerous organized crime that has taken place over the years in our culture. This is the second-largest criminal industry in the world. Organ trafficking is still included on the list prior to the advancement in medicinal research, trafficking was performed for labor. Organ trafficking is considered one of the most lucrative foreign commerce yet, because of its complex and clandestine existence, is a less debated component of human trafficking. It is a tiny branch of more common human trafficking phenomena.<sup>1</sup>

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<sup>1</sup> Ethics in Organ Transplantation, Center for Bioethics, February 2004.

Trafficking in organs is the purchase and sale of organs, particularly for transplantation. In organ trafficking, for organ removal, either organ is trafficked or actual human beings are trafficked. The absence of a possible donor organ is the primary role played in this illicit organ exchange. This ended with the illicit commercialization of human organs or the sale of organs around the world. Owing to the lack of organ donors and the growing need for organs, many highly assisted criminal organizations operate in this area. <sup>2</sup>

The higher one bids for an organ, the faster one gets it. The whole black market for trade in organs is powered by capital. The crime of selling organs is multifaceted and morally false. India is a land of abundance and diversity, but it is also a land of inconsistencies. India has some of the wealthy and poorest residents. We have science, tech, tech minds in India, and illiteracy, on the other hand.

Today, India is a continuously growing medical tourism center, and a significant majority of Indians have limited access to basic healthcare. Despite all the financial and technical advancements, in some parts of my world, children still die from diarrhea and pneumonia today; young adults die from malaria and tuberculosis; and young mothers face childbirth in fear of death. My country, India, is a land of plurality, of riches, of contradictions.

For patients suffering from a wide variety of diseases that lead to end-stage organ failure and death, organ transplantation provides the promise of survival. Millions suffering from cancer, spinal cord trauma, brain conditions and a host of other crippling and frequently fatal illnesses will now be given new hope by the advent of new transplantation specialties such as stem cell transplantation. It requires a surgical operation in which a dying or defective organ in the human body is replaced with a new organ. An organ can be defined as a mass of highly specialized cells and tissues working together in the human body to perform specific functions. <sup>3</sup> Examples of certain organs are the heart, lungs and kidneys. They are made of tissues and cells that work together in the human body to carry out specific essential functions.

## II. DISCUSSION

### A. Background: -

<sup>2</sup> Austen Garwod- Gowers, Living Donor Organ Transplantation: Key Legal and ethical issue (1999) Dart Month Publishing Company, England.

<sup>3</sup> Sanjay Nagral, Organ transplantation: ethical issues and the Indian scenario, IJME, Apr-Jun2001-9(2).

There is a massive expansion of science and technology in this new world. On the one hand, scientific inventions play a dual role in helping humanity and, on the other hand, in hindering the road to pursuing global civil rights and social justice. Since the 1950s, organ transplantation has been part of medical technology, with a kidney being the first successful organ transplantation. The genesis of organ trafficking is the development of diseases that contribute to organ loss, and the need for organ transplantation is also growing. The United Nations Office on Drugs and Crime stated that 'Human Organ for Transplantation has two origins of live donor and deceased donor'; essentially, organ is obtained from a human being, so any organ acquisition must meet with the highest moral and ethical requirements.

Demand is then addressed either by a live donor or from a cadaver donor. Any nation faces extreme scarcity of legitimately acquired organs. Thus, transplant success has been its own perpetrator.<sup>4</sup>

Criminal organ trafficking and transplant tourism are generating a growing demand for organs. Transplant tourism moves from one nation to another for organ transplantation. They chose to travel because either the waiting list for an organ is too long in their home country or the organ required is not available because there is no equipment used for organ transplantation in some cases.<sup>5</sup>

An entity who is in desperate need of organ transplantation for life, fulfills his/her obligation either lawfully or unlawfully by any practicable means and does not display concern about how and from whom the organ was received. Indians claim that human life is holy and that one can live only once, and not even God can give it back. So, in Indian culture, organ transplantation is not an unknown phenomenon. Therefore, India, too, made a big jump in the area of organ transplantation, walking with the speed of the world. In India, a cadaveric donor completed the first ever officially successful kidney transplant in 1965 and the first organ transplant from a living donor was successful in 1971.<sup>6</sup>

Organ donation and transplantation is a boon for many, but it works as an evil for a country like India, as there is no shortage of poor people and no restrictions on poor people oppressed by rich people. With growing demand not only from their own government, but also from other nations, the trafficking of a human being leads the way to the most well-known crime that has been persistent and never stopped since time immemorial.

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<sup>4</sup> Transplantation of Human Organs Act to be modified: Anbumani, The Hindu, Sunday, Aug 13, 2006.

<sup>5</sup> *Ibid.*

<sup>6</sup> Transplantation of Human Organs and Tissues Act, 1994.

## B. Features of Human Organs Act, 1994:<sup>7</sup>

1. The 1994 Law on the Transplantation of Human Organs is intended to control the removal, preservation and transplantation of human organs for medicinal purposes and to prohibit trade in human organs. The Central Act makes the procurement and disposal of human organs illegal and a criminal offence for cash-for-kidney purchases.
2. The legislation provides an administrative framework to approve and control human organ transplants and to register and regulate hospitals licensed to perform transplants by periodic inspections.<sup>8</sup>
3. It accepts the idea of brain-stem death for the first time in India, paving the way for a kidney transplant program focused on the cadaver.
4. The Act defines acts that are specifically engaged with or promote organ trade; these crimes are punishable under Section 19 of the Act.<sup>9</sup>
5. The Act makes the felony of selling kidneys non-cognizable. In other terms, the police do not independently investigate kidney trafficking complaints, but must wait for the appropriate report to be made.
6. Authority created under the Act or by an appointed officer or by a person who has given the Required Authority prior notice of no less than 60 days.
7. The Act provides for the registration of hospitals that appear to have the requisite skills and facilities to conduct complex organ transplantation in a very sensitive manner.
8. This is a legislative measure designed to preserve patients' rights. Hospitals wishing to perform transplants shall register with the Relevant Authority formed by the State Government under the Act. Approvals are issued only after certain scientific, infrastructural and medical criteria have been met by institutions.<sup>10</sup>

## III. CONCLUSION

Human life is a sacred gift one will get. Oral transplantation is a blessing to society, rather than a discovery. Evolution in this area of research has made it unlikely. In this sector, there is an improvement day by day that makes human beings victims of their own success.

Oral demand is rising day after day, but production is stagnant. As a result of this demand, the gap in supply is eliminated by illicit trading. Self-evaluation of each and every nation in the world is the solution to the trafficking issue and not to see this as a branch of human trafficking, but to take this as an individual challenge.

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Supra* 6.

<sup>9</sup> Section 19, Transplantation of Human Organs and Tissues Act, 1994.

<sup>10</sup> Transplantation of Human Organs and Tissues Act, 1994.

Government takes credit only for preventing the industrial selling of organs and having stringent rules, but successful enforcement of such laws is something they do not express interest. This dilemma has become part of the corrupt structure of every society due to the loose mentality of the government. It is not that difficult to avoid this trafficking, it is only important to control and track hospitals properly. Another useful proposal is to raise the number of donations to an organ from a deceased donor rather than a live donor to prevent the conflict between human rights and organ transplantation. The less dependent on live donors and ultimately the decline in illicit organ trafficking, the more cadaveric donations would be.

The organ of Unclaimed Bodies may also be used for transplantation, but only after careful study. Organ banks should be established, as we have a blood bank, and those banks should be properly fitted with organ removal and organ storage facilities. Organ donation in society is a stigma, the government can spread awareness about the same with the support of NGOs. There is a need for time to control this hazard through all the critical processes that are regulatory, judiciary, police management and societal intervention. To tackle this problem, all nations must come together and cooperate with each other.