

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 4 | Issue 3**

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**2021**

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# Human Organs Transplantation with Specific Reference to Transplant Tourism in India

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APRAJITA ROY<sup>1</sup>

## ABSTRACT

*Transplantation of human organs has been a dream in the past a reality in the present and challenge for the future. In today's world of medical and technological advancement human organs transplantation has improved to a large extent .It saves around 75 lives each day across the country .This research paper includes history of human organs transplantation n which evolution of organs transplantation has been explained .The most important challenge even in the present being the demand of organs exceeding its supply of organs in turn resulting in patient travelling across the borders of the country which is transplant tourism. The act which was specially enacted THOA to prevent illegal organ transplantation has also been discussed in this paper. This paper also emphasizes on the role played by judiciary which is of great importance as there are instances of rackets being operated which they extract organs from humans and sell it in order to mint money. Judiciary protects the right of an individual which is the right to health by punishing the wrongdoer as discussed in this paper. Media also has an important role in this as it publishes a lot of instances everyday making people aware globally. Accordingly this paper also contains some suggestions to overcome with these problems and to slower the rate of racketeering.*

## I. INTRODUCTION

Human organs transplant is medical process in which an organ of a body is removed from one body and placed in another body. The person from whose body the organ is transplanted is the donor and the person in whose body it is transplanted is the recipient. Usually organs that are transplant are heart, kidney, pancreas, lungs, liver, intestine, thymus and uterus. Tissues are also transplanted in certain cases such as tendons, bones, skin, cornea, heart valves, nerves and veins. In the 18th century the researchers had already experimented with organ transplantation on humans and animals but it lead to continuous failures, during the mid-20th century organ transplants started becoming successful and have now become a routine medical treatment. The first successful organ transplant was done in 1954 which was a kidney transplant and later in

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<sup>1</sup> Author is a student at Amity University Noida, India.

1960s successful transplants related to liver, pancreas and heart were also done and transplants relating to intestines were a success in 1980s<sup>2</sup>.the first successful lung transplant was done in 1990.In 1977 SEOPF( South Eastern organs procurement Foundation) an association established a database for each member institutes so that their candidates can easily find organ matches that were not available locally . Now it's already been 50 years since organs transplant has established worldwide and with improving results and it has proved to be of benefit to many patients globally. Earlier kidney transplantation was only limited to a few centers and produced very poor results as a result of which in the later 1970's Borel a medical practitioner developed immunosuppressive properties of Cyclosporine and there were a lot of experiments on this and thus the rate of kidney transplantation started improving with this<sup>3</sup>First time surgeons confidently used this cyclosporine immunosuppression in transplantation of liver and heart. Thus this cyclosporine element was considered to be a milestone in development of organ transplantation. Organ transplantation has been a big achievement all over the world and it is an Ongoing challenge aster are a lot of things still needs to be improved such as immunosuppression and also the way the organs are preserved needs to be improved. Although there is a huge development in the field of organs transplant but its success is limited due to shortage of organs. Currently there have been a lot of advancements in the field of organs transplant with India being one of the leading kidney exporters.

All the surgeries are carried out successfully with orders day advancements and since there aloof technological advancements also which prove to be helpful in organ transplantation mainly in heart and kidney transplantations. Though organs transplant is just replacing an organ which has failed with an organ that is functional but the procedure or transplanting organs is a complex procedure. It has improved to the extent that sound 95 percent of patients with kidney transplant survive for more than a year now. Each day 75 lives are save due to advancement in medical field. Organs transplant has be a dream in the past and a reality in the present and still a challenge for all of us in the future<sup>4</sup>.

## **II. TRANSPLANT TOURISM IN INDIA**

Transplant tourism is a process in which patients in order to purchase organs for the purpose of transplant travel abroad .Transplant tourism is mainly going or travelling across ones own country's borders to the other country usually if those organs are unavailable in their country

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<sup>2</sup> History of human organs transplantation available at: <https://unos.org/transplant/history/>(last visited April 21'st ,2019)

<sup>3</sup> About transplantation available at:<https://optn.transplant.hrsa.gov/>(last visited May 15<sup>th</sup> 2020)

<sup>4</sup> Hari Nadiminti, MD, "Illuminating the art of medicine", *Indian journal of medical research*7(9)571--572(2005)

or facilities regarding the same are not adequate in their countries . Since demand for transplantation of organs are exceeding the supply of organs<sup>5</sup> .Economically deprived people in need of money tend to sell their organs and get money in return but usually it gets very difficult to find organ donors and such economically deprived people are one of those donors who makes such organs available . Thus for such translation people. Have to travel across the borders in search of organs and every country has rules regarding the same. The recipient or the donor or both are guided to a transplant centre outside the country. As per WHO Colombia, India, Pakistan, Philippines are the four global hotspots for the purpose of sale of human organs. Although sale of organs is illegal in countries like India and Pakistan and organ trafficking is illegal in Philippines and there are legislations made to prevent the such illegal acts relating to organs in these countries people from all over the world come in search of organs mainly kidney in these nations. There are campaigns held for the same to provide organs to international patients but they mainly include organs purchased from poor individuals who are in need of money and not for some living donor or a deceased donor. The ministry of tourism's Incredible India website India also notifies people about kidney transplant South Asia is the leading hub globally of transplant tourism where India is the one of the top kidney exporters. In India every year more than 2000 Indians sell their kidney and mostly to international patients. Since diabetes , high blood pressure and renal diseases has increased the demand for kidneys and the demand has exceeded the supply<sup>6</sup>.There have been developments in India regarding the same after its rules have been made stricter regarding organs exchange in 2008 after the arrest of kidney kingpin who has been running one of the world's largest kidney trafficking rings . India has been leading producers of organs as poverty rate in India is very high and people are forced by their circumstances to sell their organs for money and make organs available for the purpose of transplant tourism<sup>7</sup>.

### **III. LEGISLATIVE FRAMEWORK OF THETA**

Since India has been one of the leading exporters of kidney globally there is a need to prevent the abuse of sale of organs and protect the interest of the organ donors and recipient both. Transplantation of human organs act (THOTA) was a legislation that was passed in the year 1994. This act was initially passed at the request of Goa, Maharashtra, and Himachal Pradesh

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<sup>5</sup> Okafor,U.H, "Transplant tourism among kidney transplant patients in Eastern Nigeria"BMC Nephrol 18,215 (2017)

<sup>6</sup>Turner L. 'Medical tourism' initiatives should exclude commercial organ transplantation. J R Soc Med.2008;101(8):391-394.

<sup>7</sup> Transplant tourism in India, available at: <https://www.aljazeera.com/indepth/features/2015/10/kidney-worlds-biggest-organ-market-151007074725022.html>. (last visited on October 8<sup>th</sup>,2015).

and later it was adopted by all the states in India<sup>8</sup>. It was passed to limit the activities related to organs donation and transplantation. As per this act organ sale is considered to be a punishable offence and brain death was considered as a form of death. It became possible to start other organ transplants also apart from kidney transplants such as lungs, liver, pancreas, heart and lungs. Although such legislation exists there have been cases of organ trafficking reported every year in the Indian media. There have been many instances when the provisions of this legislation have been abused. Deceased donation program apart from living donation has also come in a few states where the organs are donated by the deceased donors. The deceased donation rate in India is 0.05 to 0.08 per million population. On 30th July 2008 the government has introduced certain amendments to stop and limit the sale of organs<sup>9</sup>. As the organs commerce has been criticized by international bodies. Under THOTA sources of organs can be any near relative donor such as father, mother, son, daughter, brother, sister, spouse or any other donor who donates out of affection or attachment or any specific reason with the approval of an authorized committee or any deceased donor mainly in cases where the brain stem is dead and other organs are functional or any other type of deceased donor after cardiac death. The Brain stem death in India is considered to be a legal death under this Act. In a death where the stem of the brains dead 37organs and tissues can be donated whereas after a death from cardiac arrest only few tissues/organs are in the state of donation. In India organ donation by a deceased person still needs to be promoted as it might be risky for living donors in certain circumstances to donate their organs. It might also lead to violation of law where the rich can exploit the poor in case of living organ donation. THOTA was amended in the year 2011 and some of its important amendments were that tissues re also included in the category of organs, Tissues banks have to be registered, there were provisions regarding swap donation, there were penalties regarding organ trading so that rich doesn't exploit the poor, powers of the advisory committee has also been mentioned and this transplantation of human organs amendment act 2011 clearly prohibits donation of organs from mentally challenged persons<sup>10</sup>. THOTA mainly focuses on preventing organ commerce as before the act was enacted in 1994 the transplant of human organs were not regulated by any authority it firstly started in India in the year 1992 and during that time organ trafficking was at its peak so there felt a dire need to bring in an act to curb such mishaps happening in the country. Despite of enactment of this Act organ

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<sup>8</sup> Manisha Sahay, "Transplantation of human organs and tissues Act- "simplified", 12 Indian Journal of Transplantation 84-89(2018).

<sup>9</sup> Sunil Shroff, "legal and ethical aspects of organ donation and transplantation", 25(3) Indian Journal of Urology 348-355(2009)

<sup>10</sup> Acts related to human organ donation available at: <https://vikaspedia.in/health/organ-donation/transplantation-of-human-organs-act-19>.

trafficking still continues but it has huge penalties for violation of the provisions of this act and the main aim of this act is to protect the concept of organ donation with fairness and to keep an eye on the various rackets that have been operating in our country regarding trade of organs.

#### **IV. ILLEGAL HUMAN ORGANS TRANSPLANT**

Health is a very important factor for an individual's wellbeing, it is the state of where the mental, emotional and physical aspects of a human being is stable. Every individual has right to have proper health. For proper wellbeing of an individual state also has certain duty to protect the individuals from mishaps that challenge. Health any way. The state has to ensure a basic standard of public health. Every human beings must have the right to control one's health and one use be free from any torture on their medical or physical health by any sort of medical experiment on them. The state is also required to provide the public with services they are entitled to such as providing food, proper working conditions, adequate water supply, housing facilities etc. taking in account of socio economic problems. Apart from all such amenities and entitlement services provided to the public there are certain cases of illegal organs transplant in the country that violate provisions of THOTA<sup>11</sup>. There are a lot instances one of them being this case where a man who was the recipient in this case required a kidney from a 42 year old lady, he was paying the lady for her kidney but he showed that she was his wife and was donating it to him selflessly it was illegal as I was breaking the law. This racket also involved doctors of the hospital where the surgery was to take place and the matter came in the light of police and the lady was arrested and had to spend five weeks in the prison .This case is an example how socially and economically deprived people in need of money often sendup selling their organs due to unfortunate circumstances and this is illegal trade of organs and needs to be protected. Any kind of organ trade which involves money or another remuneration is considered to be illegal<sup>12</sup>.There have been instances of such rackets in which people in excess need of money are often willing to see their organs in some cases they approach a middleman who find them recipients and the recipients have to find both the middleman and the donor and when such rackets are busted they are liable to pay the fines which vary from rupees twenty lakhs to rupees one crore or imprisonment for five to ten years . The very famous Apollo hospital kidney racket that was busted by the Delhi Police was an illegal operation that was being carried on by the doctors of the hospital and other middlemen as per the reports the

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<sup>11</sup> Dr.Anju Vali Tikoo,'Transplantation of Human organs:The Indian Scenario',1,ILI Law Review,147-148,(2017).

<sup>12</sup> Indian laws to protect rights of organ donors available at :<https://scroll.in/pulse/861390/indias-laws-on-organ-transplantats-to-little-to-protect-rights-of-organ-donooes>,(last visited December 14<sup>th</sup>, 2017)

members of this operation they first acquired all the details of the patients who required kidneys and then they found poor donors mainly outside Delhi with some middleman's help. There were three middlemen among these who has sold four kidneys in Delhi and also three donors which included to women picked up from some village in North India. The accused were arrested including the kingpin who himself was a potential donor. Such illegal organ transplant challenges the freedom or the right possessed by every individual to secure and protect their health in every possible way<sup>13</sup>. Most of the poor people living in villages lack in knowledge regarding such rackets being operated and easily come into the web of such people for the sake of money as they are economically and socially deprived. Thus the act that has been specially enacted for the purpose of transplant of organs and penalizes such illegal activities in India.

## **V. JUDICIAL RESPONSE**

The role of judiciary in human organs transplant has been very important. Since there have been cases of illegal organ commerce it has been very important to protect the interest of such socially deprived people who are forced to sell their organs in need of money. THOTA has been enacted to curb such malicious act done by people who operate certain rackets and lure people for money and in turn sell their organs. The transplantation of human organs act came into force in 1994. During that time there were not many cases of human organs trafficking but with time such instances have increased though they are in violation with the provisions of this act. THOTA was formed to streamline the activities that are inhuman in nature and in turn illegal. This act within its scope defines terms such as brain death, appropriate authority, registered medical practitioner and near relative and various other provisions regarding transplantation of organs. A registered medical practitioner is someone who has certain qualifications such as a recognized medical qualification as per the rules of section 2(h) and is also registered in the state medical register according to section 2(k) of Indian Medical Council Act of 1956<sup>14</sup>. There were certain amendments in this act to make the provisions of this act stricter as there were a lot of violations in spite of formation of this act, the amendments were made in the year 2011. This amendment act of 2011 has made necessary the registration of doctors and recipients so as to curb the mishaps. The transplantation of human organs act 2014 has made new provisions to remove the problems that occur during organ donation and curb the misusing of these rules. In a case there was visible economic disparity between the recipient and the donor the authorization committee which is responsible for authorizing the legal

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<sup>13</sup> Editorial, "Kidney racket: Three apollo doctors likely to be questioned" *The Hindu*, June 12<sup>th</sup>, 2016.

<sup>14</sup> *Dr. Ajay Tejraj Oswal v Joint Director of health services, Maharashtra State Government Dental college building and others*, 2012(1) Mh.L.J.835

donation of organs had denied such donation but the court held it improper as per the judgments of the court for this case there was no conclusive proof that donation of organ as being done on monetary terms. Various investigations were done in this case by the police and thus the authorization committee was asked to grant permission for the organ donation<sup>15</sup>. As studied earlier any sort of organs or tissue donation which includes any remuneration in terms of money is illegal for instance if anybody is selling or buying organs in need money and if the reports suggests so then that will be considered illegal so thus to prevent such acts an authorization committee has been established by this act so that it can on the basis of investigations and medical reports approve or grant such donation as considered suitable and according to the law<sup>16</sup>. THOA has limited the transplantation of organs to three categories which are blood, spouse and someone who donates out of affection. The state is also responsible to keep an eye on all such operations going on within their respective states. Hospitals in which such operations regarding organ transplantation takes place new to be registered for the same and its name should also be in the state register. Despite of such rules being made there are inhuman activities still going on in our country and the media publishes such news every other day. There are people operating such rackets where the kidnap children from villages and sell their organs in order to mint money and that is where judiciary comes into play and plays a very important role. The medical councils that have been establishes the states have been given the sun Moto power of investigation which means if they have any doubt on any issue they can without any further approval from any authority proceed for investigation of such a case . The councils sometime also tend to ignore the complaints lodged with them and such incidents create a better ground for racketeering. There are cases where the committees which have been appointed for this purpose do not take any stringent act this is where he court acts on such case. Judiciary plays a very important role in transplantation of human organs as its aim is also to protect health of every individual as they have a right over it and any illegal act regarding this infringes their right to health. There was a case where a person was in need of an organ from a donor but on investigation it was found that the donor had some criminal antecedents and there was some doubt if he was donating the organ out of some affection thus the court held that criminal antecedents of a person cannot be considered to be a ground to refuse a person from donating his her organ<sup>17</sup>. Any person connected to each other by blood relation or has any spousal relation or someone out of affection or attachment can donate an organ and it will considered illegal only if it includes certain monetary transaction but not the person cannot be

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<sup>15</sup> Rajinder Kumar v State of Punjab, AIR 2005 P&H 172

<sup>16</sup> Acts and rules of THOA available at:<https://notto.gov.in/act-end-rules-of-thoa.htm>.

<sup>17</sup> Thasneem M.N v The district level court ,AIR 2017 KHC 256

judged on the basis of his or her past criminal records. The judiciary also requires that the recipient and the donor while dealing with organ transplantation must disclose their financial details of previous years so that the authorization committee can assess whether they were involved in some commercial transaction or not so that there is no illegal organ commerce. Thus judiciary has played a very important role in the process of transplantation of human organs as there has been tremendous increase in rate of organ trafficking and illegal organ commerce which is a crime and is punishable. The role of judiciary in this to punish the wrong and protect the person being a victim of such illegal activities.

## **VI. CONCLUSION**

Medical and technological innovations have made it very easy in the present situation to transplant human organs. Despite of such advancements there are still a few challenges and the most important one being that the demand of organs are more than the supply of organs as finding a suitable donor for a recipient is a challenge faced by all of us today. Due to demand exceeding its supply people have to travel across the country borders in search of organs which is termed as transplant tourism. Since India has been one of the leading exporters of kidney in South Asia it has a position today globally in this field. Medical expenses in India are also not as high as other countries like UK, US. There are drawbacks for the same since transplantation of organs is very important as it saves 75 lives each day according to a survey but every society has an element breaking its norms. There have been instances of rackets operating in India where people would lure people living in villages and make them fall into their trap earlier it was very less but still happened and thus in 1994 THOA was enacted to curb such activities but despite of laws being made such acts have happened and it was amended in the year 2011 with stringent provisions and punishments for the same. As per my research and information on the same even after such laws there are a lot of rackets operating in our country which even some doctors from renowned hospitals are engaged in and here judiciary plays a very important role. The role of judiciary here is to punish the person involved in such rackets. Since sometimes the state authorities also turn a blind eye to the complaints which are lodged to them and hence such cases remain unregistered there to should also be provisions for taking stringent actions regarding such authorities as turning a blind eye to such case gives more power to racketeering. Once such cases comes in front of court apart from punishing the wrongdoer the victim must also be given some compensation. In most cases the victims belong from backward localities, villages and they are illiterate and have no idea about such things they are economically deprived so in need of money they tend to fall in such traps. The government must make programmes in which they should go to villages and such backward areas and

educate people regarding the same so they are aware of all such happenings in our society. Since India is a country with its huge population being illiterate and in poverty it's very important to educate them about every such things and slower the rate of such racketeering.

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