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# FACTORS RESPONSIBLE FOR HUMAN ORGAN TRADE IN INDIA

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## ABSTRACT

The Transplantation of Human Organs and Tissues Act, passed in 1994, governs organ transplantations in India and bans the commercial use of human organs and tissues.<sup>1</sup> The Act also attempts to encourage the donation of deceased or cadaver organs and acknowledges brain death as a legal cause of death. According to Section 2(d) of the Act, "brainstem death" is the point at which all brain-stem functions have completely and irrevocably stopped and is so certified in accordance with the Act's requirements.

In this study we find out the factors that are responsible for illegal organ trade in country and how the poor and illiterate people get into the trap of the organ trader in the country. The concept of brain stem death is still unaware to the public. The organ donation rate in India is also very low. There is need of awareness programs that motivate public for organ donation and that boost up the legal organ transplant in country.

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<sup>1</sup> The Transplantation of Human Organs and Tissues Act, No. 42 of 1994 [Hereinafter 'THOTA']

## INTRODUCTION

The ability of organ transplantation to save and prolong the lives of many people with failing organs is regarded as one of the most remarkable achievements of the medical field. Transplantation has evolved from a life-saviour procedure to a sign of the unity that exists among people as a result of numerous acts of generosity on the part of organ giver and their menage as well as numerous major technological and clinical breakthroughs made by committed medical executives.<sup>2</sup> The numerous cases of human organ trafficking and trade, which involve patients who are willing to pay any amount to save their own lives and the weak and disadvantaged who are ready to give their organs for money, have soiled this process. Up to 10% of organ transplants worldwide were thought to employ such unethical methods in 2007.<sup>3</sup>

India is a well-known exporter of organs, where local donors' organs are frequently transplanted into international patients in exchange for payment. The black market for organs is alive and well and has recently had a resurgence in our country, notwithstanding the “Transplantation of Human Organs and Tissues Act, 1994” apparent contribution to a decline in the number of overseas recipients.<sup>4</sup> In accordance with the “Voluntary Health Association of India”, approximately 2000 people of our country sell their kidneys each year; however, this number does not account for all kidney donations and transplants that take place in accordance with legal protocols.<sup>5</sup> This chapter examines the reality of organ trade and trafficking, particularly in India, as well as numerous cases of illegal organ transplantations there. It also discusses many aspects that allows to the organs bussiness in India, such as the large disparity between supply and demand for organs, the participation of medical professionals in such activities, the high rate of live donations compared to the low rate of cadaver organ donations, and cultural, religious, and emotional barriers.

## ORGAN TRADE AND TRAFFICKING

Organ trading is the commercial exchange of human organs between one person and another, and it typically takes place outside of established transplantation protocols. Organ trafficking,

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<sup>2</sup> The Preamble, *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, 2018 ed. [Hereinafter ‘Declaration of Istanbul’].

<sup>3</sup> Debra Budiani, COFS, *Human Trafficking for an Organ Removal (HTOR): A Call for Prevention, Protection, Investigations and Accountability*, (2012)

<sup>4</sup> *Id.*

<sup>5</sup> “Chris Hogg, *Why not allow organ trading?*, BBC NEWS,” <http://news.bbc.co.uk/2/hi/health/2224554.stm>.

organ harvesting, storing, transplant tourism and organ sales, are only a few of the different practises it includes.<sup>6</sup> The first instances of organ trading can be found in the end of 1980s, when transplant doctors in the Gulf countries deal with a high impermanence rate among outpatients who had bought kidneys in our country and had come back for further care. 130 patients from the UAE and Oman travelled to Mumbai between June 1984 and May 1988 in order to obtain kidneys from a living donor, according to information supplied by medical professionals, unrelated Indian donor; nonetheless, such practises were not made illegal in India until 1994.<sup>7</sup> India has long been a centre for organ transplants because of the low cost of care and the willingness of people to sell their organs out of necessity. This practise continues even now, despite laws in place that make it illegal. According to the “Istanbul Declaration against Organ Trafficking and Transplant Tourism”<sup>8</sup>

“Organ trafficking consists of (a) removing organs from living or deceased donors without valid consent or authorisation or in exchange for financial gain or comparable advantage to the donor and/or a third person; or (b) any transportation, manipulation, transplantation or other use of such organs; or (c) offering any undue advantage to, or requesting the same by, a healthcare professional, public official, or employee of a private sector entity to facilitate or perform such removal or use; or (d) soliciting or recruiting donors or recipients, where carried out for financial gain or comparable advantage; or (e) attempting to commit, or aiding or abetting the commission of, any of these acts”.

This definition was derived from the “Council of Europe Convention on Trafficking in Human Organs”, 2015<sup>9</sup> by the drafters of the Declaration. While organ trade includes organ trafficking, it can also be carried out between persons with valid consent with or without knowledge of the illegality of such practices. On the other hand, organ trafficking involves coercion, force, or undue advantage or removing the organs either without obtaining valid consent from the donor or without his knowledge.

There are cases where people's organs are removed without their knowledge under the guise of unrelated procedures or medical treatments. While some people are unaware that they have

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<sup>6</sup> Seán Columb, *Beneath the organ trade: a critical analysis of the organ trafficking discourse*, 63, CRIME LAW SOC. CHANGE, 21-47 (2015).

<sup>7</sup> Jessica De Jong, *Human Trafficking for the purpose of Organ removal* (2017).

<sup>8</sup> The Preamble, *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, 2018 ed. [Hereinafter ‘Declaration of Istanbul’] at 2

<sup>9</sup> “Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings*” May 16, 2005, CETS 197.

lived their entire lives without one kidney or any other organ, others become aware of this while they are having routine medical exams or are being treated for a connected condition. There have even been instances where the husband and in-laws removed a kidney and then sold it for money as a result of the dowry demand.<sup>10</sup>

Even after the THOTA went into effect, there have been several reports and arrests of rackets connected to organ scandals, particularly those involving kidneys, in different parts of the nation. The Gurugram Kidney Scandal, a multibillion rupee racket that was run by an unqualified non-medical self-declared surgeon who performed 600 illicit kidney transplants between 1996 and 2008, is well-known for its effects on a national and worldwide level. This person was repeatedly detained but eventually obtained bail or escaped from police custody, moved to various locations, and continued engaging in such unlawful activities. A Special CBI Court sentenced him and his brother, who was also implicated in the scam, for 7 years in prison and a penalty of 60 lakhs in 2013.<sup>11</sup> He was eventually apprehended in late 2017 after managing to escape police custody, and in February 2020, the offender received a second term of 7 years in prison and a monetary penalty of Rs. 20,000 for threatening the scheme witness.<sup>12</sup>

A non-profit organisation called Coalition for Organ Failure Solutions - India identified about 1000 sufferer of human trafficking done for the reason of organ grafting in India between September 2010 and May 2012, and semi-structured in-depth qualitative interviews with 153 of them were conducted in four different parts of the nation: small towns in Karnataka, erode, villages in West Bengal, and Chennai. One of these victims' kidneys was removed from them between 1981 and 2012, in 34 cases, or 22% of all kidney removals, which makes it abundantly clear that illegal transplants and commercial dealings with human organs continue to take place even after the THTOA went into effect. The victims spoke about their experiences and mentioned that, in addition to the unfavourable social, economic, and psychological effects of having their organs removed, their health had been worsening. The commercial excision of a kidney was involved in each of these incidents, and the doctors' confirmation came from

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<sup>10</sup> DR. RAMESH KUMAR, KIDNEY TRANSPLANTS AND SCAMS: INDIA'S TROUBLESOME LEGACY (Sage Publications Pvt. Ltd) (2020) [Hereinafter 'Kidney transplants and scams'].

<sup>11</sup> *Id.*

<sup>12</sup> Kidney scam kingpin gets 7 yrs in jail for threatening witnesses, THE TRIBUNE, (Feb. 29, 2020), <https://www.tribuneindia.com/news/chandigarh/kidney-scam-kingpin-gets-7-yrs-in-jail-forthreatening-witnesses-49165>.

subsequent medical exams.<sup>13</sup>

According to reports from 2002, the tribal people of Kerala were the target of organ trafficking. The tribe members were forced to give their organs for some amount of cash. The tribal people from the groups of Aaryans, Ooralis Ulladas and dalits did not hesitate to acknowledge that they exist by selling their kidneys. As a result, the shady racketeers tightened their hold on these tribes since they could see that they were willing to sell their kidneys. Without any encouragement, the indigenous people offered to sell their kidneys for Rs. 1.5 lakh each. As a result, intermediaries started to refer to Poomala, a village, as the "Kidney Village." The tribal kidney scam in the state included elements of deception and duping prospective receivers and extortion of millions of rupees on the fake promise of locating a qualified kidney giver person. The Kochi city police detained the scam's mastermind in 2014. The THOTA which outlawed activities involving soliciting kidney donors through print or visual media, was in effect in 2011, and the relatives of the victims claimed that they first came into contact with the accused via an advertising in a newspaper that they had themselves issued asking for kidney donors, the newspaper. Other reports of paid organ transplants and illegal organ trade in the state were also made<sup>14</sup> In Amritsar, Punjab, another kidney racket with transactions of Rs. 150 crores was busted in 2012. The police detained other doctors, lawyers, middlemen, and one of the city's finest kidney transplant surgeons.<sup>15</sup>

Organ sales and purchases over the internet are not a recent occurrence in the nation. Cyber scams are extremely dangerous because they include undetectable, consistently phoney money transfers to unidentified fraudsters online with not a single benefit to donor and even frequently no benefit to the person who get the organ. False advertisements on WhatsApp, Facebook, and other social media platforms, as well as false hospital websites, foundations, and other platforms, allow both domestic and international organ trade.<sup>16</sup>

## **FACTORS FACILITATING ORGAN TRADE IN THE COUNTRY**

India's ongoing prevalence of a few recurring elements is linked to the country's organ trade.

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<sup>13</sup> "Coalition for Organ Failure Solutions, *Human Trafficking for organ removal in India: An Evidence Based, Victim-Centered report*" (2014).

<sup>14</sup> DR. RAMESH KUMAR, *KIDNEY TRANSPLANTS AND SCAMS: INDIA'S TROUBLESOME LEGACY* (Sage Publications Pvt. Ltd) (2020) [Hereinafter 'Kidney transplants and scams'].

<sup>15</sup> Ramesh Vinayak, *Cash-for-kidney racket exposed in Amritsar; top doctors, lawyers and middlemen held*, INDIA TODAY, (Jan. 27, 2003), <https://www.indiatoday.in/magazine/crime/story/20030127-cashfor-kidney-racket-exposed-in-amritsar-top-doctors-lawyers-and-middlemen-held-793674-2003-01-27>.

<sup>16</sup> *supra* note 13.

These are the main reasons why the organ trade and other illicit activities connected to it are encouraged in the nation, and they also contribute to the booming organ market. The following is a discussion of some of the significant factors that have been identified:

### **WIDE GAP BETWEEN THE NEED AND SUPPLY OF ORGANS**

One of the major grounds for the flourishing organ trade in the country is the direct consequence of the large space between the need and supply of human organs. It is a general tendency that when there is a shortage of something, people accumulate the same through illegal means, especially in this case, when it is literally a question of living or dying, the gravity and frequency of such practices increase. The commercialization of human organs has resulted from the increasing demand for these tissues. India's deceased organ donation rate is significantly low as compared to other countries across the world. As per the International Registry of Organ donation and transplantation, the rate of organ donation our country stands at 0.52 per million, compared to the donation rate of other countries like America's 38, Spain's 37.9, Croatia's 24.5 per million, respectively.<sup>17</sup>

In response to a question in the Lok Sabha, the Union Health Minister acknowledged the fact that there was a remarkable space between the supply and the need of human organs for transplant in 2016, even with the actuality that the exact quantity of premature deaths that were caused by failures of the heart, liver, lungs, and pancreas has not been compiled. This admission came as the Union Health Minister attempted to address the issue. According to the report, 2 lakh kidneys were needed, but only 6000 kidneys were available. Similarly, only 1500 livers were available compared to the need for 30,000 livers, and only 15 hearts were available compared to the need for 50,000 hearts for organ transplants nationwide.<sup>18</sup> Despite the fact that 1.8 lakh people experience renal failure every year, only 6000 kidney transplants are performed throughout the nation. Similarly, every year in India, over 2 lakh individuals pass away from liver cancer or failure; of these, 10-15% of patients could be spared with a timely liver transplant. Although the country requires between 25,000 and 30,000 liver transplants each year, only approximately 1500 of them are performed each year. This is despite the fact that the number of transplants should be between 25,000 and 30,000.

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<sup>17</sup> Donation and Transplantation Institute, *International Registry in Organ Donation and Transplantation*, (Jun. 2021) [Hereinafter 'International Registry'].

<sup>18</sup> *Lok Sabha Parliamentary Q & A on Organ Donation & Transplantation*, Unstarred Question No. 1563, (Mar. 4, 2016), available at <https://www.mohanfoundation.org/loksabha/loksabhaQA.asp>.

Similarly, over 50,000 people suffer from Heart failures annually, yet the number of transplants performed per year stands at a measly 10 or 15. Similar statistics apply to Cornea, where 25,000 transplants are carried out annually compared to a need of 100,000.<sup>19</sup>

These figures make it clear that the nation suffers from a severe organ scarcity. This large disparity between the availability and demand for human organs is the primary driver of the illegal organ trafficking in the nation. People frequently purchase illegally obtained organs in exchange for money. India still has a long way to go to close the supply-demand mismatch. This can be accomplished through raising public awareness of organ donation and boosting the number of cadaver organ donations. There would be a huge decrease in the prevalence of unlawful practices with coupled to organ donation and organ transplantation in nation if the gap is closed and the organs are easily accessible through legal means.

### **COLLUSION OF MEDICAL PROFESSIONALS**

The promotion of these illegal activities that are practised in the nation is greatly aided by the engagement of medical professionals and hospital administrators. According to reports, doctors or hospital administrators have been detained as a result of their involvement in organisations that traffic or sell organs. Despite the fact that saving lives is what the medical field is known for, there are certain medical experts that help recipients and middlemen obtain organs in exchange for money. They continue to be involved in the sector despite being aware of the illegality of such acts. Doctors have occasionally been detained for their participation in kidney rackets or other organ fraud schemes. In 2019, 15 people were detained for participating in a kidney racket with its headquarters in Delhi. These individuals included doctors, hospital administrators, and medical staff. The National Capital Region is thought to be the centre of the sophisticated illegal organ trade.<sup>20</sup>

In 2016, a similar strategy was revealed in Mumbai, when 14 people were detained for engaging in such unlawful activities. Out of these 14, five of them were medical professionals who were

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<sup>19</sup> *National Organ Transplant Programme*, DIRECTORATE GENERAL OF HEALTH SERVICES, MINISTRY OF HEALTH & FAMILY WELFARE, GOVERNMENT OF INDIA, [https://dghs.gov.in/content/1353\\_3\\_NationalOrganTransplantProgramme.aspx](https://dghs.gov.in/content/1353_3_NationalOrganTransplantProgramme.aspx).

<sup>20</sup> *Kidney racket: Mastermind doctors get 7-yr jail*, The Hindustan Times, (Mar. 23, 2013), <https://www.hindustantimes.com/india/kidney-racket-mastermind-doctors-get-7-yr-jail/storyOUEAL33HijQabKVnlhATsK.html>; *The unravelling of a kidney racket*, THE HINDU (Jul. 27, 2019), <https://www.thehindu.com/sci-tech/health/the-unravelling-of-a-kidney-racket/article28725737.ece> [Hereinafter 'Unravelling of a kidney racket']; *Top Indian hospitals, foreign clients, donors from UP caught in 'kidney transplant racket'*, THE PRINT (Jun. 13, 2019), <https://theprint.in/india/top-indianhospitals-foreign-clients-donors-from-up-caught-in-kidney-transplant-racket/249221/>

detained after a committee of medical experts assembled through effort of Maharashtra Directorate of Health Services uncovered numerous discrepancies with kidney transplants carried out in the facility.<sup>21</sup> As a result of such events, the public begins to lose faith and confidence in the medical community. It is regrettable that hospital administrators and medical staff assisted and participated in such a serious offence that has been criminalised in the nation. A significant opposition from the medical community would be necessary in order for the organ market to thrive in the country, in addition to the illegal transplantations carried out in unlicensed clinics by untrained experts. The situation is different in India, where at least some medical personnel are involved in organ rackets and significantly contribute to the country's organ market.

## POVERTY AND UNEMPLOYMENT

The main drivers driving the rich and middlemen's exploitation of the poor and vulnerable for organs are poverty and unemployment. In India, the unemployment rate is 7.1% as of 2020<sup>22</sup>, while as of 2012, 22% of the population lived in poverty.<sup>23</sup> As a result, In India, a large fraction of the population is both jobless and living below the country's official poverty threshold. Certain elements encourage these social groups to participate in both legal and illicit activities in order to raise money for their basic requirements. Poor and vulnerable members of society are being pressured into organ donation under the pretence of being a close relative or someone who cares about or is attached to the recipient. The donor and beneficiary didn't actually know one another until a few days ago, in reality. Through various media stories and scientific publications from other nations, numerous cases of organ removal even without the donor's knowledge and without meeting pre- and post-transplant requirements that resulted in major health issues have come to light.<sup>24</sup>

While some members of these organisations are pressured into making organ donations, others are ready to sell their organs in order to clear one's debts and purchase necessities like food,

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<sup>21</sup> *Kidney Racket: All 5 Doctors of Mumbai's Hiranandani Hospital Get Bail*, NDTV, (Aug. 18, 2016), <https://www.ndtv.com/mumbai-news/kidney-racket-all-5-doctors-of-mumbais-hiranandani-hospital-get-bail-1445667>; *Kidney racket: Five Hiranandani doctors charge sheeted for criminal conspiracy*, THE TIMES OF INDIA, (Oct. 11, 2016), <https://timesofindia.indiatimes.com/city/mumbai/kidney-racketfive-hiranandani-doctors-chargesheeted-for-criminal-conspiracy/articleshow/54789249.cms>

<sup>22</sup> *Poverty Data: India*, ASIAN DEVELOPMENT BANK, <https://www.adb.org/countries/india/poverty>.

<sup>23</sup> Joyita, *Poverty Estimation in India*, PRS LEGISLATIVE RESEARCH, (Aug.5, 2013), <https://www.prsindia.org/theprsblog/poverty-estimation-india>.

<sup>24</sup> KS Chugh et.al., '*Problems and Outcomes of Living Unrelated Donor Transplants in Developing Countries*', 57 (74), KIDNEY INT., 131-135 (2000) [Hereinafter '*Problems and outcomes of living transplants*'].

clothing, shelter, etc. that they would otherwise be unable to afford.<sup>25</sup> It is ironic that a village in Chennai is known as "Kidneyvakkam" or "Kidneyville" since most of the residents there have sold their kidneys in order to enjoy a normal life, despite the fact that the country has laws against the commodification of organs. The tsunami that severely damaged this town in 2004 caused many people to lose their lives, homes, and earning family members, making them potential organ buyers. They had to sell their kidneys because of their financial struggles in order to fulfil their most basic necessities. Many of them then stated that they had not received the promised sum.<sup>26</sup>

In his book, journalist Scott Carney refers to the market for bones, organs, and blood as the "red market" and mentions that he visited and spoke with Kidneyvakkam's organ trafficking victims. A mother in the area was reported to have sold her kidney because she couldn't afford to pay for her daughter's medical bills after she attempted suicide due to her unhappy marriage, according to the book. It was typical for brokers to approach these folks when they needed money and wanted to sell their kidney. The aforementioned woman still experiences agony from having her kidney removed, thus she was unable to return to her employment at construction sites.<sup>27</sup> In cases of organ removal and transplantation, thorough medical subsequent care is required for both the organ giver and the organ beneficiary. Such medical follow-up and post-transplant needs are not carried out in cases of commercial organ deals, especially from the poor, leaving people with deteriorating health that makes it difficult for them to even continue working and earning their living. Despite the fact that such transactions are prohibited, it is a sad fact that the impoverished do not gain and that, even after selling their organs, their health and financial situation deteriorate.

Therefore, it is evident that it is simple to take advantage of persons that are willing to give their organs in return for amount money. The donors are left with one kidney or a portion of

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<sup>25</sup> M Goyal et al, *Economic and Health Consequences of Selling a Kidney in India*, 288, JAMA, 1589- 1593, (2002); A survey conducted by the authors of the article in 2001, among 305 individuals who had sold a kidney in Chennai revealed that 96 % of the participants sold their kidneys to pay off debts. The average amount received was \$1070, and most of the payment received was spent on debts, food, and clothing.

<sup>26</sup> In *TN's Kidneyvakkam, an organ can be bought for Rs 40,000*, THE TIMES OF INDIA, (Jan. 29, 2008), <https://timesofindia.indiatimes.com/india/in-tns-kidneyvakkam-an-organ-can-be-bought-for-rs40000/articleshow/2739927.cms> [Hereinafter 'TN's Kidneyvakkam']; Scott Carney, *Inside 'Kidneyville': Rani's Story*, WIRED, (Aug. 5, 2007), <https://www.wired.com/2007/05/india-transplantsrani/> [Hereinafter 'Inside 'Kidneyville': Rani's Story'].

<sup>27</sup> SCOTT CARNEY, *THE RED MARKET: ON THE TRAIL OF THE WORLD'S ORGAN BROKERS, BONE THIEVES, BLOOD FARMERS, AND CHILD TRAFFICKERS*, (Harper Collins Publishers) (2011); *Blood, Bones and Organs: The Gruesome 'Red Market*, NPR, (Jun. 10, 2011), <https://www.npr.org/2011/06/10/136931615/blood-bones-and-organs-the-gruesome-red-market>;

any other organ, a frail body, and no means of resolving their financial problems, while the middlemen, doctors, or hospital authorities reap substantial financial rewards in the name of a single business transaction. A kidney is sold about 70 Lakhs to 1 crore rupees, according to a top police official from the Uttar Pradesh Police, depending on how urgently one is needed. However, neither the donor nor the sale of the organ ever earns more than Rs. 3 Lakhs; instead, the remaining sum is divided among individuals who operate this unlawful enterprise.

Such kidney rackets or organ scammers prey on the needy who are in desperate need of money to pay off their debts and fulfil other fundamental demands. Therefore, unemployment and poverty both significantly contribute to these criminal acts. People knowingly sell their organs or are forced into such illicit actions because they believe that doing so is their only option for maintaining their lives. According to studies, the majority of organ traffickers worldwide are from groups who are weak and destitute.<sup>28</sup> The exploitation of the weak and vulnerable by the wealthy and middlemen for the purpose of procuring organs can be avoided in India if poverty and unemployment are significantly reduced.

### **3.4 LOW RATES OF CADAVER ORGAN DONATIONS AND OVERRELIANCE ON LIVE DONATIONS**

Less than 8% of all transplants from 1994 to 2019 were corpse contributions, according to estimates from the NOTTO, leaving all other transplants to be accounted for by living donations. The attempts of several Non-Governmental Organizations and hospitals that always strongly pledged to the cause have enabled a significant portion of these cadaver organ donations to take place. One of the main causes of the commercialization and unlawful deals with regard to organs can be attributed to the general tendency that patients in need of organ transplants and their families prefer living donors. The figures above show that, in comparison to cadaver organ transplants, a sizable proportion of transplants are carried out using living organ donors across the nation. With the accordance to the “International Registry of Organ donation and transplantation”, India's dead organ donation count, which is 0.52 per million, is extremely low when compared to other nations around the world.<sup>29</sup>

For instance, just 205 cadaver organ transplants have been carried out in the state of Kerala

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<sup>28</sup> MESHELEMIH, J.C.A., LYNCH, R.E., THE CAUSE AND CONSEQUENCE OF HUMAN TRAFFICKING: HUMAN RIGHTS VIOLATIONS, ch. 9, (Ohio State University Pressbook) (2019).

<sup>29</sup> Donation and Transplantation Institute, *International Registry in Organ Donation and Transplantation*, (Jun. 2021) [Hereinafter ‘International Registry’].

between 2017 and 2020, compared to 2,895 live contributions. This excessive reliance on live organ donations, according to experts, is a significant factor in the growth of the illicit organ trade.<sup>30</sup> The number of patients at the AIIMS at Delhi, that were deemed brain dead and who later became possible organ donors over the course of five years, from 2007 to 2012, is another example that may support the same theory. Only 10 of the 205 people who were hospitalised and pronounced brain dead, according to a research, turned out to be potential organ donors.

a lack of informed consent, difficulties with the procedures, and patients who weren't consulted, Patients who were insufficiently stable for donation, age, and cross, among other factors, account for the non-giving of organs in the remaining cases.<sup>31</sup> Increased live donations while cadaver organ donation is still low contribute to the nation's commercial organ trade. Due to the low number of deceased organ donors, many people now decide to donate live organs, sometimes even through unlawful ways.

Given the large frequency of fatal road traffic incidents and the untapped potential of this pool, India has a significant need for deceased organ donations. India accounted for 6% of all traffic accidents worldwide as of 2006, with an annual average of about 90,000. One of the states, Tamil Nadu, recorded 13,000 fatalities from traffic incidents in 2005. Around 40 to 50 percent of dangerous road accidents worldwide result in head injuries, which leaves potential cadaver organ donor in the nation by the dangerous road accidents. Additional brain deaths could result from other conditions such brain tumours and sub-arachnoid' haemorrhage. There would be no need for any live organ donations even if 5 to 10% of those who passed away become organ donors.<sup>32</sup> Therefore, it might be very beneficial to inform and persuade the family members of the possibility of preserving lives from brain-dead victims of traffic accidents. A decrease in unlawful organ donations from living people made for financial gain is anticipated as cadaver organ donation rates are emphasised.

## **EMOTIONAL, CULTURAL/RELIGIOUS CONSTRAINTS IN ORGAN DONATION**

Many religions, civilizations, and individuals generally believe a dead body as sacred. India is

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<sup>30</sup> *Id.*

<sup>31</sup> Dileep V Kumar, *Demand for organs from living donors behind thriving illegal trade in Kerala: Experts*, THE NEW INDIAN EXPRESS, (Oct. 28, 2020), <https://www.newindianexpress.com/states/kerala/2020/oct/28/demand-for-organs-from-living-donorsbehind-thriving-illegal-trade-in-kerala-experts-221585>

<sup>32</sup> Chhavi Sawhney et al., *Organ retrieval and banking in brain dead trauma patients: Our experience at level-1 trauma centre and current views*, 57(3), INDIAN J ANAESTH., 241-247 (2013).

a nation with a diverse population of religious and cultural backgrounds. Some faiths in India typically forbid actions like gathering and hoarding cadaver organs.<sup>33</sup> Despite the fact that no religion officially opposes organ donation, there are several common misconceptions about this practise. People who believe in rebirth frequently hold the opinion that if a person gives their organs, they will be born in the future life without those organs.<sup>34</sup> Other obstacles to organ donation include those linked to culture, physical integrity, emotional components of donation, and family unwillingness to donate organs in cases where cadaver organs are donated, among other things. According to research on the subject, the barriers are more likely to be connected to concerns about bodily integrity and familial opposition than to questions of religious permissibility, which suggests that the challenges surrounding organ donation are more cultural than religious in character.<sup>35</sup>

When it comes to cadaver organ donations, the family members or the person legally in charge of the body might not be ready to comprehend the significance of organ donation at this point or be in a mental state to authorise the transfer of the expired person's organs. The mourning relatives are hesitant to consider or comprehend the idea of cadaver organ donations for many reasons, including the facts which do not want their loved one's body to be dismembered, the fact that brain death is still not widely accepted by the public, the concern that the body will not be treated with integrity and respect, the belief that the removal of organs is disrespectful to the dead body, etc.<sup>36</sup>

Charity and organ donation concepts differ from one culture to the next, and the idea of organ donation is partly cultural. According to a nephrologist, when a person is pronounced brain dead in India, there is a general mistrust of the medical staff and hospital administration. The families frequently think that the brain death was declared so that the deceased's organs might be harvested for sale. As a result, it can be challenging to explain and debate the subject matter of organ donation with the deceased's family, and they may not even be receptive. Due to numerous allegations of medical professionals' cooperation in the organ trade, there is a general loss of faith in the government and the country's medical system's fairness for deceased organ

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<sup>33</sup> Molly Moore, John Anderson, *Kidney Racket Riles Indians*, THE WASHINGTON POST, (Apr. 30, 1995), <https://www.washingtonpost.com/archive/politics/1995/04/30/kidney-racket-rilesindians/4c51d8b0-429a-4294-afd6-5a991cd29ea0/>.

<sup>34</sup> Anju Vali, *Transplantation of human organs: the Indian scenario*, 1, ILILR (Summer, 2017) [Hereinafter 'Transplantation of human organs'].

<sup>35</sup> Joanne Blake, *Religious beliefs and attitudes to organ donation*, Welsh Government Social Research No. 44/2015, <https://orca.cardiff.ac.uk/115471/1/150730-religious-beliefs-attitudes-organ-donationen.pdf>

<sup>36</sup> *supra* note 33.

donation.<sup>37</sup> These emotional factors are preventing people from donating organs from cadavers. One of the challenging jobs for boosting the rate of cadaver organ donations is getting the families' permission; otherwise, there will be unlawful trades because there won't be any human organs available.

People still have a limited understanding of the idea of brain death and have a propensity to think that while the heart is still beating, there might be some recovery. To the extent that they don't have any misconceptions about cadaver organ donations, it is imperative to educate the public about the idea of brain death. By dispelling these beliefs, people will be better able to grasp the concept of organ donation, which will escort to an escalate in the number of organs donated from cadavers. Due of the emotional issues involved, hospital officials are also a little hesitant to get the relatives' permission. Doctors and medical personnel should take the required steps to inform the relatives or person legally in charge of the body of the details of cadaver organ donation. Despite the fact that no one religion is opposed to organ donation and that some even view it as a kind of charity, there are several common misconceptions, as was already discussed. The problem can be greatly alleviated by raising knowledge of organ donation and its significance, by having religious leaders or other prominent figures advocate for the cause, etc.

### **DONATION OF ORGANS IS UNDERRATED AND NOT WELL-KNOWN**

An important aspect in the nation's organ trade is a deficiency of knowledge regarding organ donation. There are subsets of the population who are not amicable with the view of organ donation or the fact that it is against the law to sell human organs for financial gain. The general population is discouraged from giving organs and engaging in commercial transactions involving human organs due to widespread myths and misconceptions about organ donation. Only 22% of those questioned in the research carried out in an urban region of India had never heard of the concept of organ donation, whereas 78% of those surveyed were aware of the concept of organ donation. 39% of those who took part in the survey had no idea who could donate organs, 31.7% thought it only happened afterwards cardiovascular death, only 24.4% knew about the concept live organ donation, and approximate 14.6% knew about organs coming from brain dead people. Only 7.3% of the participants knew that someone who is brain dead is

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<sup>37</sup> Organ India, *A Study of the deceased organ donation environment in Delhi/NCR*, (2014), <https://www.organindia.org/wp-content/uploads/2014/11/ORGAN-Research-Report.pdf> [Hereinafter 'Organ India'].

legally called as dead, and 39% said that they do not have any idea what is brain death was.<sup>38</sup> Given the amount of awareness in metropolitan areas, it is predicted that rural areas of the nation will have substantially lower levels of awareness.

Although it is not asserted that awareness is the only factor influencing organ donations, it certainly contributes significantly to the rise in organ donation rates in the nation. As mentioned before under the emotional and cultural barriers to organ donation, the organ donation rate would suffer if people were unaware of or had false beliefs about the fundamental notions of organ donation concept. The nation's organ donation rate had significantly increased due to result of the public's increased knowledge of the importance of organ donation.<sup>39</sup> As its outcome, raising awareness in public about organ donation, especially cadaver organ donation, It has the aptitude to greatly increase the number of people in India who donate organs, which would help to reduce the space between the supply and need for organs. There would be a significant decrease in the commercial deals of organs once the gap is closed. The majority of the aforementioned issues can be greatly alleviated by raising public knowledge through large-scale awareness campaigns, seminars, the development of medical infrastructure in government hospitals, etc. due to the fact that the general population does not have a complete understanding of the ideas of organ donation or brain death, it is important to explain them to the concerned people in plain language and to ensure that the donated organs must be used for virtuous rather than as a material on the organ merchandise and with the utmost respect for the deceased. Although there has been an increase in awareness over the years, it still hasn't reached a point where it can stop the unethical trade in organs for cadaver purpose. The amount of organ trade in the nation can be significantly decreased by raising awareness and dispelling misconceptions in people's minds.

## CONCLUSION

If the nation's illegal organ trade is not reined in, it will breed other crimes including kidnapping, human trafficking for organ harvesting, and organ theft. India is a very populous nation with a

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<sup>38</sup> Vaishaly K. Bharambe et al., *Awareness regarding body and organ donation amongst the population of an urban city in India*, 5(4), NUJHS, 51-57 (2015).

<sup>39</sup> Ann Alex et al., *Did an increase in knowledge and awareness about organ donation improve organ donation rate in India over the past two decades*, 13(3), INDIAN J TRANSPLANT., 173-178 (2019); A study conducted by the authors of the article to examine the difference in knowledge and attitude among the public about organ donation over two decades from 1998 to 2017 by dividing the participants into two groups on the basis of the time period, showed results stating that there was a significant increase in the level of awareness which resulted in an increase in the rate of organ donations [Hereinafter 'Increase in awareness improve organ donation'].

substantial portion of the population that is impoverished and vulnerable, so it is crucial to prevent such people from being taken advantage of through such unlawful means. Ending commercial use of human organs is vital, as is taking the commodification of those organs seriously. The aforementioned elements support the lucrative organ trade and make it easier for kidney rackets and criminals engaged in such activities to operate in the nation. By altering or getting rid of the causes of the thriving organ trade in the nation, this needs to be changed.

The aforementioned causes all significantly contribute to the country's illegal organ trade and the growing commoditization of human organs. Organ trade can be reduced to a great extent by eliminating the factors mentioned above. Although some factors can be greatly alleviated by taking various actions, such as raising public awareness of organ donation, increasing the rate of cadaver organ donations, doctors and hospital administrators abstaining from engaging in commercial activities, etc., effective government intervention is required to reduce the significant space between the need and supply of organs, lower the nation's poverty and unemployment rate, among other things. Along with the aforementioned considerations, the THOTA's ineffectiveness is a significant contributor to the country's ongoing organ trade. Even with the actuality that the Act deems it illegal to engage in commercial transactions involving human organs and tissues, India nevertheless allows such activities. The next chapter will analyse the reasons why such criminal actions have not been stopped as well as the shortcomings in the law.