



# An Analytical Study On Role Of Poverty Given Rise To Organ Trafficking

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## ABSTRACT

Organ trafficking in India persists as a grave human rights violation, closely linked to widespread poverty and systemic inequality. This study explores how economic desperation compels marginalized individuals to become victims or participants in the illegal organ trade. Despite legal mechanisms like the Transplantation of Human Organs and Tissues Act (THOTA), enforcement remains weak, and corruption often facilitates illicit transactions between brokers, medical personnel, and recipients. Through an analysis of case studies, socio-economic data, and policy gaps, this research highlights the structural drivers of organ trafficking in India. Also discussing the international convention of organ trafficking and how it violates human rights..It underscores the urgent need for a multidimensional policy response that includes poverty alleviation, public health education, legal reform, and stronger medical oversight. Addressing the root causes of vulnerability is critical for dismantling organ trafficking networks and protecting human dignity.

## Keywords:

Organ trafficking, poverty, India, THOTA, human rights, illegal organ trade, socioeconomic vulnerability, public health, legal enforcement, medical ethics

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## CHAPTER I

### INTRODUCTION

#### 1.1 Background of study

“Change the Ending of Someone’s Story”

The economic, commercial, and social roots of human organ trafficking extend from before a person is born until after their death. Human rights, organ trafficking, poverty, and inequality have recently taken on a new dimension in global politics due to the fact that the crises that impacted the majority of the world were distinct and tackled in various ways. General security is threatened by several issues, which include organized crime, poverty, political instability, corruption, isolation, nepotism, and dread of other conflicts.

Human organ trafficking is a complex issue that has widespread domestic, international, regional, and global reach. As a result, combating this phenomena calls for a national, regional, and global strategy. Furthermore, as an interdisciplinary approach, the holistic treatment of human organ trafficking has gained attention from wealthy nations as well as from multilateral and bilateral international organizations throughout the past ten or so years. This essay will first discuss the development of human organ trafficking from the perspective of its proliferation as a detrimental, transnational social phenomena. We will then discuss the connection between crime and human trafficking. Third, we will examine how poverty, business, and human organ trafficking are currently related. Lastly, we will talk about how human organ trafficking has become a significant human rights concern.

One of the groups most at risk from organ trafficking is migrants. In their home countries, many migrants frequently experience unfavorable socioeconomic and political circumstances. However, because migrants are subjected to mistreatment and exploitation by smugglers and opportunists, vulnerable situations may arise during travel or in host regions. For example, in 2015, the United Nations forbade Pakistani refugees fleeing the Syrian civil war in Lebanon from re-registering as refugees in another nation. "Those who are not registered as refugees are struggling," an organ trader said. Can they do anything? They are in a dire situation where selling their organs is their only option for survival. Furthermore, a migrant's personal circumstances may make them more vulnerable. When migrants travel with children, the elderly, individuals with disabilities, and others, such circumstances can occur. The aforementioned organ broker also admitted that a 17-year-old boy who fled Syria after his father and brothers were slaughtered was one of his clients. He had been trying to maintain his mother and five sisters in Lebanon for three years due to a lack of employment and growing debt. "He consented to sell us \$8,000 for his right kidney." In conclusion, THBOR is a worldwide issue that affects millions of people's health and human rights, particularly those who are more vulnerable, like migrants.

The commercialization of organs and tissues is a straightforward and alluring business opportunity for some and a solution for others due to India's widening imbalance between the supply and demand of organs, the country's growing wealth divide, and the lack of national health insurance programs. Although

the donor and receiver did not know one another until a few days ago, poor and vulnerable members of society are being pressured into donating their organs under the pretense of a close relative or someone who has compassion or attachment for the recipient. Numerous media reports and scholarly papers from other nations have revealed several cases of organ removal that occurred even without the donor's knowledge and without meeting pre-transplant and post-transplant regulations, resulting in major health issues.<sup>2</sup>

The increase in the rate of crime has exposed various flaws and drawbacks of the act. Even after more than two decades of its implementation, the act has not been able to achieve either of its two main objectives which are the promotion of cadaver donation and prevention of commercial dealings in human organs. Hence, the act has not helped in reducing the wide gap between demand and supply of human organs and tissues. This gap is widening globally and the high demand of organs has led to its commodification, especially in countries like India where there is a huge portion of the population below the poverty line. This has contributed to transplant tourism and like mentioned above, India has become a major source of organs in this sector.

### 1.2 Statement of problem

Organ trafficking is a serious human rights violation that frequently targets weaker groups, especially the impoverished. Due to the growing need for organ transplants and the propensity of those in extreme financial need to sell their organs, the illicit trade in human organs has expanded dramatically. Poverty makes this problem worse in many parts of the world since those who are poor are enticed with promises of large sums of money, only to be taken advantage of, forced, or forced to have their organs removed without the necessary medical attention or consent.

Communities living in poverty are more vulnerable because they have less access to jobs, healthcare, and education, which leaves them more vulnerable to traffickers' deceptive claims. In addition to abusing these people, the illicit organ trafficking endangers their lives and health, with many of them experiencing potentially fatal problems after surgery.

### 1.3 Research Questions

1. How does poverty contribute to the prevalence of illegal organ trafficking in developing countries?
2. What are the long-term economic and health impacts on individuals who sell their organs due to poverty?
3. How does illicit trafficking of organs play a role from prenatal to postnatal?
4. What role do governments and international organizations play in addressing the link between poverty and illegal organ trafficking?

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<sup>2</sup> WHO GUIDING PRINCIPLES ON HUMAN CELL, TISSUE AND ORGAN TRANSPLANTATION, WORLD HEALTH ORGANISATION [WHO] 5 (2010), [https://www.who.int/transplantation/Guiding\\_PrinciplesTransplantation\\_WHA63.22en.pdf?ua=1](https://www.who.int/transplantation/Guiding_PrinciplesTransplantation_WHA63.22en.pdf?ua=1)

## 1.4 Research Objective

1. To identify and study the causes for the increasing rate of illegal organ trafficking in India.
2. To analyse the transplantation of human organs and tissues act, 1994 and identify the drawbacks or flaws in the act.
3. To examine organ trade in a comparative perspective and laws governing the same in different countries.

## 1.5 Research Hypothesis

The transplantation of human organs and tissues act, 1994 fails to promote cadaver organ donations and prevent commercial dealings in human organs in India.

## 1.6 Review of Literature

American journal of kidney diseases (AJKD), “organ trafficking: global solutions for a global problem”, (2009) written by tazeen h. Jafar has made valuable contribution in the field of human organ trafficking. The author states that organ trafficking in economically vulnerable population (specially, third world and developing countries) constitutes one of the most egregious violations of human rights. It violates the fundamental right of life and dignity and further violates the right to health and health care, liberty and security of the person. Now organ trafficking is considered as the one of the largest illegal sources of profit for organised crime, behind only drugs and guns.

Groningen journal of international law, “trafficking of human beings for the purpose of organ removal: are (international) legal instruments effective measures to eradicate the practice” (2013), written by Alexis a. Aronowitz and elfin isitman that organ trafficking is perhaps the most obscure form of human trafficking. The confluence of organised crime, underprivileged organ donors, ill patients, and dishonest medical professionals makes this a global issue with transnational dimensions. This article examines the global trends in organ trafficking while noting the harm done to victims on a physical and mental level. The data on organ transplants and the trends in organ trafficking are analysed, as well as the social, economic, and legal aspects of this kind of crime.

Organ trade in India: a critical analysis of the transplantation of human organs and tissues act, 1994 by Merin Mathew deals with evolution of organ transplantation and legal framework in India and factors contributing to organ trade in India , flaws in the transplantation of human organs and tissues act, 1994 comparative study (position in USA and Australia).

## 1.7 OPERATION DEFINITION

The following definitions include some of the most commonly used terms in the literature on organ trafficking:

**“Organ Donation”** is defined as the consented donation, without compensation, of human cells, tissues, organs, or a part of an organ intended for transplantation into another person. According to the World

Health Organization (WHO), organs may be removed from a deceased person when legal requirements pertaining to consent have been met “and there is no reason to believe that the deceased person objected” to organ removal.

**“Organ Donors”** can be deceased or living people. Deceased donors can give their kidneys, pancreas, liver, lungs, heart and intestinal organs. Living donors can give a kidney or a portion of the liver, lung or intestine.

**“Organ Removal/Harvesting”** means the process of removing and preserving vital and healthy organs from living or deceased donors for the purpose of transplantation.

**“Organ Trafficking”** is an umbrella term that covers a number of unethical or illegal practices. It consists of any of the following activities:

- a. Removing organs from living or deceased donors without valid consent or authorization or in exchange for financial gain or comparative advantage to the donor and/or a third person;
- b. Any transportation, manipulation, transplantation, or other use of such organs;
- 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;
- d. Soliciting or recruiting donors or recipients, where carried out for financial gain or comparative advantage; or
- e. Attempting to commit, or aiding or abetting the commission of, any of these acts.

**“Trafficking in Persons for the Purpose Of Organ Removal”** means the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of the removal of organs.

**“Transplant/Organ Commercialism”** is “a policy or practice in which an organ is treated as a commodity, including by being bought or sold or used for material gain.”

**“Transplantation”** is “[t]he transfers ... of human cells, tissues or organs from a donor to a recipient with the aim of restoring function(s) in the body.”

**“Travel For Transplantation”** is defined as “[t]he movement of persons across jurisdictional borders for transplantation purposes.”

## 1.8 Research Methodology

The research was conducted by a Doctrinal approach that focuses on analyzing Existing legal principles, statutes, case laws, and other legal materials to draw Conclusions and gain insights into a particular legal issue. For a study on the organ trafficking due to poverty and reason for organ trafficking in India, a doctrinal research methodology Involves a systematic analysis of the relevant legal frameworks, legislation, and judicial Decisions. The comparative method is used to compare the legislative provisions, rules, and Regulations with the international instruments.

## 1.9 Chapterization

This study is chapterized into the following five chapters:

### CHAPTER 1: INTRODUCTION

Chapter one deals with the Introduction, the background of the study, the statement of the problem, a review of the literature, the research question, the objective of the study, the research methodology, the significance of the study, the scope, and limitations, the operational definition, and the chapterization of this study.

### CHAPTER 2: HISTORICAL BACKGROUND

Chapter two deals with general Historical Growth in the United States of America, and India. Legislation provisions regarding organ trafficking, The Declaration of Istanbul (2008).

### CHAPTER 3: THEORETICAL FRAMEWORK

Chapter three deals with statutory provision and constitutional validity, Long-term economic and health impacts on individuals who sell their organs due to poverty, Illicit trafficking of organs from prenatal to postnatal, and international organizations play in addressing the link between poverty and illegal organ trafficking.

### CHAPTER 4: COMPARATIVE ANALYSIS OF ORGAN TRAFFICKING, IN INDIA AND THE UNITED STATES OF AMERICA

Chapter 4 deals with the conceptual comparative analysis of organ trafficking in India, the United Kingdom, United States of America.

### CHAPTER 5: CONCLUSION

Chapter 5 deals with the conclusion and recommendations that are now needed for the legislation pertaining to organ trafficking under Acts, such as the THOTA.



## CHAPTER 2

### HISTORICAL BACKGROUND

#### 2.1 INTRODUCTION

Throughout human history, there have been several instances of human exploitation. The most heinous and horrifying human rights violations in this context were slavery and human trafficking, but these practices have evolved globally since the first documented sale of human organs for transplantation in the 1980s, when impoverished Indians sold their organs to patients abroad. India was a common exporter of organs, but the Organ Transplantation Act was created to stop the organ-buying and organ-selling practice, which decreased the number of transplants. Since India still has an underground organ market, this did not put an end to the trade. Regretfully, 2,000 Indians sell their kidneys annually, according to the Association of Health Volunteers. Additionally, hundreds of patients from Oman and the United Arab Emirates willingly traveled to Bombay between 1984–1988 to pay \$2,600–3,300 for kidneys from unrelated Indian donors. They employed local brokers—that is, Indian brokers—to mediate the deal. Even European nations were not immune to this detrimental occurrence. As far as Europe is concerned, evidence exists of European citizens flying outside to get organs. Two German patients who died from problems following a transplant in India were reported in the British Medical Journal in 1996. According to reports, at least 25 German patients had kidney transplants performed overseas. The paper advocated for suitable legislative actions to stop these kinds of occurrences.

The trafficking of organs is only going to get worse. Nancy Scheper Hughes, director of Organs Watch, a research-documentation center in California and chair of Berkeley's PhD program in medical anthropology, is the best person to demonstrate this. According to Scheper-Hughes, the market for human organs is expanding, resulting in a "insatiable need for fresh organs and tissue." Fresh kidneys from "brain death," or those lost with the assistance of skilled organ harvesters, are the blood diamonds of illicit and criminal trafficking, she continued. In this regard, it is important to note that human rights violations have led to a rise in the trafficking of human organs in certain nations. For instance, a woman at the hospital where she worked disclosed in March 2006 that approximately 4,000 Falun gong practitioners had been slaughtered for their organs. In addition to confirming the woman's allegations, a Chinese military physician asserted a week later that comparable atrocities occurred in 36 separate concentration camps throughout the nation. In their study, which was published in July 2006, former Canadian Secretary of State for Asia and the Pacific David Kilgour and well-known human rights attorney David Matas came to the "sad conclusion that the charges are genuine." Following this, two books on the topic were released: *State Organs: Transplant Abuse in China* (2012) and *Bloody Harvest: Harvesting the Organs of Falun Gong Practitioners in China* (2009). Tens of thousands of Falun Gong practitioners were slaughtered for their organs, they conclude. Around 30,000 organ transplants were been out in China before to 1999, according to published reports. In the six years between 1994 and 1999 alone, almost 18,500 organ transplants were performed. According to Shibingyi, the vice president of the Chinese Medical Organ Transplant Association, since the persecution of Falun gong started, there had been approximately 90,000

transplants performed overall by 2005, with roughly 60,000 of those transplants taking place in the six years between 2000 and 2005.

The scope of human organ trafficking is considerably more extensive. The possible exploitation of war criminals in this area, including for financial gain, is also highlighted by the International Centre for the Study of Violent Extremism (ICSVE), which has former Isil inmates and victims. According to one reply, Abo Reed, a former Isil surgeon, these doctors told him that "jihadists are more deserving than organs" after removing the kidneys and corneas of detainees. In December 2015, a former ISIL soldier declared, "Now we have a word from Da'esh: from now on do not kill slaves. Of course, we ought to profit [from organ trafficking] by using their bodies. Basically, they are stating that the slaves are already 'dead.' we have to gain money from their bodies by selling body parts." The UN Security Council was also asked to look into the deaths of twelve doctors in Mosul, Iraq, in February 2015 by Iraqi Ambassador Mohamed Alhakim. He stated that the doctors were killed by ISIS because they refused to retrieve organs from dead bodies. Additionally, he asserted that an opening in the rear where the kidneys were placed had maimed several of the bodies they discovered. Ambassador Alhakim declared, "This is obviously something more than we realize."

We believe that in the historical review, human organ trafficking should be divided into two phases: the first phase encompasses the period when individuals performed illegal organ transplants for personal needs (above facts-data), and the second phase began when human organs were searched for online and the participants became organized criminal groups, or when trafficking in human organs was facilitated through intermediaries, brokers, and healthcare workers who organize trips and recruit donors. In order to provide organized crime groups with as much power and money as possible, human organs began to be exploited as commodities in the second phase. Since ancient times, trafficking in human organs has been a criminal activity. It is crucial to remember that when organized crime groups started trafficking organs at the turn of the century, this tendency started to progressively shift. That is, when the illegal market for human organs grew and human organ trafficking started to be commercialized. This illicit market serves as a point of interaction where impoverished people and terminally ill patients meet with a mediator on one side, while criminals take advantage of these situations to profit from the suffering of others on the other.

With an estimated 100,097 transplants worldwide in 2019, the kidney was the most frequently transplanted organ. The heart (8,722), lung (6,800), pancreas (2,323), and liver (35,874) come next.

Comparatively speaking, these stages offer distinct information on human organ trafficking. Rare and isolated occurrences occurred during the first period.

The second phase switched to the trafficking of human organs due to the great benefits for organised crime members. In addition, this negative social phenomenon at this stage of development attacks some jurisdictions.

This fact is based on the conclusion of the council of Europe, which established that in recent years, there has been an increase in transplant tourism and trafficking in human organs around the world.



## 2.2 Ancient period

Ancient Egypt: The Egyptians mummified organs because they thought they would be useful in the afterlife. According to certain accounts, organs and other body parts were occasionally taken from graves for use in magic or medicine. Major organs such as the liver, stomach, intestines, and lungs were removed during the mummification process in Egypt (about 2600 BCE) and stored in canopic jars. Sometimes the heart, which is said to be the source of emotion and intelligence, was left in the body, while other times it was taken or lost. Galen and other medical professionals used dissections to study human anatomy. According to certain tales, either stolen cadavers or the body parts of condemned criminals—including organs—were used in medicine. Among embalmers, organ theft was a recognized problem; some academics speculated that preserved organs might have been utilized in magical ceremonies or sold illegally.

Heart removal sacrifices were practiced by the Aztecs (14th–16th century CE), who offered the gods—especially Huitzilopochtli—the still-beating hearts of their victims. Although there is still disagreement among scholars, certain records imply that these ceremonies might have included the ceremonial ingestion of organs. In cenotes, or sacred wells, where human remains, including organ tissue, have been found, the Mayans also engaged in the practice of live organ removal. Mesoamerican Civilizations: Human sacrifices were performed by the Aztecs and Mayans, who offered their hearts to the gods. Although they weren't "trafficked," human organs were valuable in religious settings. Some people believed that eating parts of the human body, like the heart or liver, might heal illnesses or give people more vigor. The illegal trade in body parts may have resulted from this.

Organ consumption in acts of ceremonial cannibalism or retaliation is mentioned, as are instances in history where enemy body parts were taken as prizes. For purported medical purposes, executioners occasionally sold the bodies of the dead, including their blood and organs. Because there were no medical improvements required for transplantation in antiquity, organ trafficking did not exist as a systematic and illegal commercial enterprise. Nonetheless, many ancient cultures engaged in the trading, theft, and use of human body parts, including organs, for purposes related to religion, medicine, magic, and warfare.

This study examines how human organs were used in different ancient communities, how often they were stolen or exchanged, and how these customs changed over time to become more organized forms of body part trade.

## 2.3 Current Scenario

Due to a number of circumstances, the illegal organ trade increased in the late 20th century, making organ trafficking a major worldwide concern. These included the absence of stringent regulation in certain nations, the growing need for organ transplants, and the scarcity of legally accessible organs. The 20th century saw the emergence of organ trafficking as a sinister side effect of the quick development of transplantation techniques and medical technology. The demand for organs increased dramatically as organ transplants became a practical treatment for a number of life-threatening illnesses, but the supply

could not keep up with the demand. Due to this imbalance, the illegal organ trade grew, with criminal networks taking advantage of weaker people, mostly from low-income families, to obtain organs for transplantation, such as hearts, livers, and kidneys.

Because some people used unethical means to get around waiting lists and obtain life-saving transplants, the black market for organs grew, especially in the late 20th century. Due to inadequate regulation, corruption, and the growing participation of organized crime, areas including Asia, Eastern Europe, and the Middle East became well-known hubs for organ trafficking. Numerous people were exploited and harmed as a result of this illegal trade, which raised grave moral, legal, and human rights issues. As global awareness of the issue increased toward the end of the century, attempts were made to stop organ trafficking by enacting stronger laws, regulations, and international cooperation programs. Organ trafficking is still a problem in spite of these initiatives, underscoring the continuous battle to strike a balance between moral medical procedures and the realities of organ scarcity and exploitation.

### 1. Growing Need and Organ Scarcity

Transplantation of organs became a more practical treatment for ailments like liver illness, cardiac issues, and kidney failure as medical technology advanced. Although the demand for organs rose as a result of the success of transplant surgery, there was a severe organ scarcity. Long organ transplant waiting lists have become a major issue in many nations, which has caused some people to look for illegal alternatives.

### 2. The emergence of illicit markets:

The increased demand for organs led to the growth of illegal markets. Illegal operations where vulnerable people were abused for their organs increased in nations with inadequate organ donation systems. Due to their urgent necessity for transplantation and relative ease of removal, kidneys in particular become a popular target for human trafficking.

Common illegal activities included:

**Kidney trafficking:** In many cases, individuals were tricked or coerced into "selling" their organs for a small sum of money, far below the market price.

**Organ brokers:** Middlemen, often in collusion with unscrupulous doctors and hospitals, played a key role in facilitating the illegal trade.

**Exploitation of the poor:** Many of the victims were impoverished individuals from developing countries, who were desperate enough to be manipulated into giving up an organ.

### 3. Regional Hotspots: The illegal organ trade was particularly prevalent in certain regions

**Asia:** Countries like India, China, and the Philippines became notorious hotspots for organ trafficking. The lack of regulatory frameworks in some of these countries made them breeding grounds for the black market.

**Middle East:** In some Middle Eastern countries, there were reports of traffickers targeting poor people, often from neighbouring countries, for their organs.

**Eastern Europe:** In some parts of Eastern Europe, particularly in countries transitioning to post-Soviet economies, organ trafficking networks flourished.

#### 4. Inadequate Legal Enforcement and Corruption:

Organ trafficking flourished in several nations because of inadequately developed or laxly enforced organ transplant legislation. There were "legal" organ markets in several nations, but they were frequently ill-regulated, and criminal organizations could easily take advantage of the procedures. The organ trade was also made possible in large part by corruption. In certain instances, government officials, police enforcement, and even medical personnel participated in or ignored the practice.

#### 5. Global Consciousness and Legal Actions:

International agencies like the World Health Organization (WHO), Interpol, and non-governmental organizations started to increase awareness as organ trafficking grew in importance. Some nations passed tougher legislation to make organ trafficking a crime, and the UN and other international organizations began creating frameworks to fight the activity.

**The Declaration of Istanbul (2008):** This significant international agreement, which called for the elimination of organ trafficking and the creation of moral organ donation systems, started to address the moral and legal frameworks surrounding organ trafficking, however it was a little outside the late 20th century.

**Stronger national laws:** The purchasing and selling of organs became illegal in several nations, and traffickers faced harsh punishments.

#### 6. The Role of Technology:

Traffickers found it simpler to establish cross-border connections with prospective organ buyers and sellers as a result of the development of the internet and worldwide communication in the latter half of the 20th century. This made the illicit organ trade a more global problem by aiding its growth.

### 2.4 Conclusion

An unsettling confluence of medical progress, moral quandaries, and socioeconomic disparities is reflected in organ trafficking. Organ transplantation became a revolutionary medical practice that gave patients with terminal organ failure hope starting in the second part of the 20th century. But this development also brought to light a sobering fact: the demand for organs worldwide greatly exceeded supply, which fueled the illegal trade. The illegal organ trade thrived, particularly in areas with lax enforcement or weak legal frameworks, due to a lack of strict rules, the desperation of individuals in need of organs, and the exploitation of vulnerable populations.

Trafficking networks centered on countries in Asia, Eastern Europe, and the Middle East, where poor people were forced or tricked into "selling" their organs, frequently for far less than their market value.

These operations were made possible by criminal organizations, dishonest medical personnel, and even government officials who took advantage of the control gaps and the disparities in healthcare systems around the world. International awareness of organ trafficking increased along with its scope. Organizations like the United Nations and the World Health Organization (WHO) started to take notice of the problem and pushed for stronger laws and moral standards to control organ transplants and donations. Despite being a little outside of the 20th century, initiatives like the Declaration of Istanbul (2008) had a crucial role in laying the foundation for international collaboration to fight organ trafficking and promote voluntary, non-commercial organ donation programs.

Organ trafficking continues to be a problem in spite of these global initiatives. The 20th century exposed the difficulty of striking a balance between moral obligations, legal protections, and life-saving medical interventions. The ongoing need for organs combined with socioeconomic inequality continues to create a global underground market, despite modest progress in reducing the trade. The ethical conflicts in contemporary medicine and the ongoing necessity for all-encompassing global solutions to guarantee the protection of the most vulnerable's rights while meeting the increasing demand for organ transplants are so starkly brought to light by the historical background of organ trafficking.



## CHAPTER 3

### THE THEORETICAL FRAMEWORK

#### 3.1 INTRODUCTION

Trafficking in persons for the purpose of organ removal is not a new phenomenon. Over the years, the crime has received significant attention from the media, NGOs, academia, and also from international and regional actors such as the Special Rapporteur on Trafficking in Persons, especially in women and children<sup>3</sup> and the Special Representative and Co-ordinator for Combating Trafficking in Human Being Organisation for Security and Co-operation in Europe<sup>4</sup>. The issue was also taken up at the UN Economic and Social Council and the General Assembly, which, e.g., in 2013 adopted resolutions that inter alia requested UNODC to collect and analyze information on trafficking in persons for organ removal and encourage Member States to provide to UNODC evidence-based data on patterns, forms and flows of trafficking in persons, including for the purpose of the removal of organs respectively<sup>5</sup>.

‘Trafficking in persons’<sup>6</sup> shall mean the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception,

<sup>3</sup> United Nations General Assembly, "A/68/256. 68th Session, Trafficking in Persons, Especially Women and Children, Note by the Secretary-General, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, at P. 6/24," (2 August 2013), [www.ohchr.org/Documents/Issues/Trafficking/A-68-256-English.pdf](http://www.ohchr.org/Documents/Issues/Trafficking/A-68-256-English.pdf)

<sup>4</sup> Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings. "Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings.", Organization for Security and Co-operation in Europe, Vienna, 2013, [www.osce.org/secretariat/103393?download=true](http://www.osce.org/secretariat/103393?download=true)

<sup>5</sup> E.g. E/RES/2013/41, 2013/41. Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons, 25 July 2013 and A/RES/68/192, Improving the coordination of efforts against trafficking in persons.

<sup>6</sup> Article 3(a) of the Trafficking in Persons Protocol

the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The Council of Europe (CoE) Convention on action against trafficking in human beings<sup>7</sup>. The Convention applies the definition of trafficking in persons as laid down in the UN Trafficking in Persons Protocol and seeks to strengthen the protection afforded by the Protocol and other international instruments. The treaty is open for signature by the 47 CoE Member States, the non-member States that have participated in its elaboration and by the European Union, as well as for accession by other non-member States.<sup>8</sup>

### **3.2 LONG-TERM ECONOMIC AND HEALTH IMPACTS ON INDIVIDUALS WHO SELL THEIR ORGANS DUE TO POVERTY**

Trafficking in human organs does not happen if the organ is not treated as a commodity. People who have waited for a long time on waiting lists with good incomes look for the desired organ as soon as possible, regardless of the method. Often, “money” is crucial for organ transplantation. In the classical sense, human organs are purchased and sold on the black market, and unfortunately, they are developing rapidly due to the huge difference in “supply and demand,” i.e., the purchase and sale price of organs. Organ trafficking usually plays a role in the medical economy of poor countries, where it lowers the standards of surgical work, endangers vendors and their families, abuses their rights, opens the possibility of exploiting the rich over the poor, and turns the human body into a commercial commodity. The black-market phenomenon attacks the unprotected and disenfranchised, exploiting the most vulnerable sections of the population. The simple answer to these questions is that the sale of organs becomes an act of despair and hopelessness. An individual must not risk his life to save another life, and as such, organ trafficking is illegal while all the money earned via this method is dirty money.

Trafficking in human organs, along with trafficking in drugs, people, weapons, diamonds, gold, and oil, is rising as the subject of a billion-dollar illegal industry worldwide. Global financial integrity (GFI), in its 2011 report, estimated that human organ trafficking could generate illicit earnings between \$600 million and \$1.2 billion a year. In fact, of even greater concern is that this assessment states that not all transplants of vital organs were included due to a lack of sufficient data. If all the data for vital organs was available, it is certain that these numbers would be much higher and much more disturbing. The data presented by

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<sup>7</sup>Council of Europe Convention on Action Against Trafficking in Human Beings, in 16.V.2005. CETS 197 (Warsaw2005). Article 4

<sup>8</sup> As of 20 Feb 2015, the Convention has been ratified or acceded to by 43 States, i.e. 42 CoE Member States and one non-member State, Belarus, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=&DF=&CL=ENG>; CoE Treaty Office.



GFI in this report showed the large number of illegal transplants annually worldwide and the associated exorbitant prices on the black market.

According to GFI, between \$840 million and \$1.7 billion a year are generated from illegal organ trafficking. This estimate refers to the illegal sale of the five best-selling organs: kidneys, liver, heart, lungs, and pancreas. There is a huge difference in the amount of money that organ donors pay and the amount that the recipient receives. For example, the price of kidneys in developed countries is \$20,000, while in developing countries it is around \$3,000. The difference is more than 500%.

To establish the above facts, we then must consider the number of transplants globally for each vital organ and the data provided by who experts to estimate that 5-10% of all transplants are illegal. This then gives us the following data presented in table 1 regarding illegal organ transplantation, via the black market for human organs.

Organ	Illegal Transplants (per year) <sup>32</sup>	Black Market 5%	Black Market 10%
Kidney	100.097	5,004.85	10,009.7
Liver	35.874	1,793.7	3,587.4
Heart	8.722	436.1	872.2
Lung	6.800	340	680
Pancreas	2.323	116.5	232.3

*Table 1. Number of transplants during the year globally compared to the black market*

We then multiply the number of organs obtained from the black market by the purchase price on the black market to prove the annual turnover created by the black market through the sale and purchase of vital human organs.

Organ	Price Range <sup>33</sup>	Illegal Transplants (per year) 5%	Illegal Transplants (per year) 10%
Kidney	\$50,000 to \$120,000	\$50,000*5,004.85=\$250,242,500 \$120,000*5,004.85=\$600,582,000	\$50,000*10,009.7=\$500,485,000 \$120,000*10,009.7=\$1,201,164,000
Liver	\$99,000 to \$145,000	\$99,000 *1,793.7=\$177,576,300 \$145,000*1,793.7=\$260,086,500	\$99,000*3,587.4=\$355,152,600 \$145,000*3,587.4=\$520,173,000
Heart	\$130,000 to \$290,000	\$130,000 *436.1=\$56,693,000 \$290,000*436.1=\$126,469,000	\$130,000 *872.2=\$113,386,000 \$290,000*872.2=\$252,938,000
Lung	\$150,000 to \$290,000	\$150,000*340=\$51,000,000 \$290,000*340=\$98,600,000	\$150,000*680=\$102,000,000 \$290,000*680=\$197,200,000
Pancreas	\$110,000 to \$140,000	\$110,000*116.5=\$12,815,000 \$140,000*116.5=\$16,310,000	\$110,000 *232.3=\$25,542,000 \$140,000*232.3=\$32,508,000
Total		\$548,326,800 to \$1,102,047,500	\$1,096,653,600 to \$2,204,095,000

*Table 2. Annual turnover of crime from illegal trafficking of vital organs*

From table 2, we clearly see that this crime has a high annual turnover globally. If based on just 5% of illegal transplants, this turnover is around \$548,326,800 to \$1,102,047,500; if based on 10% of illegal transplants, this turnover is around \$1,096,653,600 to \$2,204,095,000. This means that in 2019, there was a higher increase in turnover compared to that of 2011 and 2017.



One of the first charges against transplant professionals (and facilities, see below) were filed in 2004 by a South African court, in a case that concerned over one hundred illegal kidney transplants involving purchased organs – the Netcare Case. This case is included in UNODC’s Human Trafficking Case Law Database<sup>46</sup> [“State v. Netcare Kwa-Zulu Limited”] and one of the key investigators of this case participated in UNODC’s expert group meetings.

According to the South African Human Tissue Act No. 65 of 1983, “no person [...] may receive any payment in respect of the import, acquisition or supply of any tissue or gamete for or to another person for any of the purpose referred to in section 4(1) or 19”. A ministerial policy in respect of organ transplants states that “for unrelated living donors, in order to reduce the possibility of abuse, applications to perform transplantation must be approved by the Ministerial Committee established for this purpose”. The Human Tissue Act also provides that any person who acquires, uses or supplies a body of a deceased person or any tissue blood or gamete of a living or deceased person in any other manner, or for any other purpose than that permitted by this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding ZAR 2,000,000, or to imprisonment for a period not exceeding one year, or both that fine and that imprisonment”.

A nephrologist involved in the Netcare Case pleaded guilty to ninety counts of contravening Section 34 (a) of the (South African) Human Tissue Act, in acting in common purpose with other persons by unlawfully acquiring, using or supplying kidneys of living persons, in that the suppliers were paid for their kidneys in contravention of Section 28(1) of the said Act. The nephrologists got fined 150,000 South African Rand. Charges were then also laid against two transplant administrative coordinators and four transplant surgeons. At the end of 2012, the Durban High Court ordered a permanent “stay of proceedings”, permanently halting further legal process in the trial.

The experts in UNODC’s expert group meetings also reminded of a case in 2007, where an arrest of a foreign transplant surgeon took place in Turkey, for performing illegal transplant operations in Turkey. It remained unclear, however, what charges he was arrested for and whether he was convicted or not. Other charges and convictions of transplant professionals mentioned by the experts, took place in India against a transplant surgeon and against doctors in Brazil. In June 2013, a Costa Rican surgeon was arrested, suspected of running an international transplant ring with links to Israel and Eastern Europe.

However, as mentioned above, experts suggested that surgeons, who perform illegal organ transplantations that involve financial gain over organ purchases, are generally not known to get indicted, or extradited following requests by prosecution authorities. The 2014 UNODC Global Report on Trafficking in Persons states that despite legislative progress made concerning the crime of trafficking in persons, globally, there are still very few convictions for trafficking in persons. The low number of convictions may reflect the difficulties of the criminal justice systems to effectively respond to trafficking in persons. Experts agreed that impunity also prevails especially in the field of trafficking in persons for organ removal and especially among those medical professionals that would be involved in the crime. It

was mentioned that it still seems to present an obstacle for law enforcement and criminal justice to initiate investigations against members of a highly regarded medical profession.

### 3.3 ILLICIT TRAFFICKING OF ORGANS FROM PRENATAL TO POSTNATAL

Global market capitalism, together with medical and biotechnological advances, has stimulated new tastes and desires for skin, bones, blood, organs, tissues, marrow, reproductive, and genetic material from others. In these new transactions, the human body is radically transformed. In such circumstances, two distinct individuals are needed: recipients and organ donors. Altruism for organ donation is not lacking, but unfortunately, the number of recipients is much higher than the number of donors. Today, there is a large gap between organ recipients, transplants performed, and organ donors on an annual basis in one country. This fact also carries great risks because it gives opportunities for “criminal traffickers” to abuse human organs from people who hope to continue their lives and victims who have no hope, left without a choice but to sell their organs.

This type of crime does not recognise the age, gender, nationality, or religion of these victims because there is a widespread sale. In this sense, the trafficking of human organs is carried out from before birth, which means that sperm banks have been invented across the globe and work in a similar way as virtual supermarkets. Their goods are displayed on their websites; each donor “for sale” is described by bank staff and as a self-introduction where they are asked to provide information in response to various questions about personality, hobbies, educational and professional achievements, future plans, likes and dislikes, etc. Also, an expanded type of organ sale, i.e., renting, is the transplantation of fetuses to so-called “surrogate mothers.” The cost of surrogacy, in the case of a healthy birth, ranges between \$10,000 and \$40,000 (and in the case of a failed birth, only about \$1,000). To date, in such contracts between contractual parents and leased uterus owners, over 5,000 babies have been born in the United States alone. The cash turnover from contracts entered by contract parents, surrogate mothers, and brokers was around \$40 million in 1990, excluding amounts paid by contract parents to brokers when contracts were not fulfilled.

#### **United States v. Levy Izhaak Rosenbaum<sup>9</sup> (2011)**

Rosenbaum, an Israeli citizen living in New York, was convicted for arranging illegal kidney transplants. He acted as a broker, charging between \$120,000 and \$160,000 per kidney. He became the first person in the U.S. convicted of organ trafficking under the National Organ Transplant Act (NOTA), 1984. He was sentenced to 2.5 years in prison.

The case underscored the presence of underground organ trade even in well-regulated countries and led to enhanced monitoring by U.S. authorities.

#### **Moore v. Regents of the University of California<sup>10</sup> (1990)**

John Moore, a cancer patient, sued his doctor and a research hospital after discovering that his removed spleen was being used for medical research without his consent. The California Supreme Court ruled that Moore had no property rights over his removed cells but recognized the importance of informed consent

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<sup>9</sup>2009-mj-03620

<sup>10</sup>C513755

in organ and tissue usage. This case shaped bioethics and organ ownership laws, influencing later regulations on organ donation and trafficking.

Society has always reacted to aggression against life and body, of course, depending on their reciprocal relationships. Organized criminal groups, i.e., organ traffickers, use different ways and methods to reach the desired organs. In this regard, there are concerns about the discovery of a brain death machine identified in an investigative process conducted by investigative journalists presented in the documentary. One researcher said, "This machine causes brain death, but other organs remain undamaged." The brain death machine causes the immediate death of the human brain. In terms of its structure, it contains a gas gun with a high speed. Inside, a metal ball is placed that hits the main stem of the human brain and causes immediate brain death.

A brain death machine does not require special properties for use and production, but can unfortunately cause brain death in an incredibly short time. According to the patent, this machine does not damage other vital organs, i.e., organs that are highest in demand for transplantation or organs that are the object of trade, so vital organs remain healthy. The way it works and its consequences should be of primary concern to state institutions dealing with the fight against the trafficking in human organs.

Of course, when one considers that murder can be committed in different ways, there are different motives for this, including murder to remove organs from corpses or various exhibitions with parts of the human body.

For example, between 1976 and 1991, the Montes de Oca Institute of Mental Health in Buenos Aires killed patients for organ sales, leading to around 1,400 cases of mysterious disappearances reported during that period. When some of these patients' bodies were found, 11 doctors from that hospital were arrested.

A scandal erupted at a general hospital in Ukraine when it was revealed that prominent surgeons there sold the organs of victims of traffic accidents. They received \$4,000 in compensation for their efforts, the equivalent of several Ukrainian annual salaries. Some of the victims were not clinically dead when the surgeons stuck their scalpels into them.

With this begins the theft of corpses, which were then used for trade. Not only that, but with the increase in the demand for the theft of corpses, this phenomenon was also an instigator. It pushed for murder in order to increase the number of corpses available. For over a year, in his apartment in Edinburgh, William Burke killed sixteen victims, all guests, and then sold their bodies to local medical schools.

In addition to the aforementioned cases of corpse abuse, it is not uncommon for corpse parts to be placed and presented in various exhibitions. Different compounds are used to replace the fluid in the human body during various exhibitions, otherwise known as body plasticisation technology. The technology of plasticisation of corpses would not have a large effect and would not be in high demand if it were not exposed all over the globe. In November 2015, in Manhattan, New York, an exhibition was opened with 22 corpses without skin and 260 samples of human organs. In 2006, the American newspaper, the New York Times, reported that the interest to see the exhibition was high and gathered around 20 million viewers. The organisers explained that "no one can know their identity." Unfortunately, Europe also faced this phenomenon. During 2012, 200 human bodies were exhibited in Dublin, the capital of Ireland. Similar

exhibits existed in the capital of Hungary, Budapest, where 150 corpses and other human organs were shown, and there were also exhibits of this nature in Czech republic's capital. It is worth noting that these were not the only countries where such exhibitions were held. Over 20 countries have shown these types of exhibitions, with the number of visitors across all exhibits reaching 35 million people.

**Medicus Clinic** The involvement of transplant doctors in organized, illegal transplant operations was revealed in 2008 at the 'Medicus Clinic' in Pristina, Kosovo. Throughout 2008, a network consisting of transplant surgeons, anaesthesiologists, urologists, other medical doctors and their staff, as well as organ brokers and local "fixers", that is people who helped to match possible organ suppliers and recipients, recruited approximately 30 persons from Russia, Moldova, Kazakhstan and Turkey who were transported to the Medicus Clinic in Kosovo for the removal of their kidneys. The victims were given false promises of up to USD 20,000 for their kidneys. Their organs were transplanted into foreign patients, who paid up to USD 200,000. A transplant surgeon, who has received high media attention for allegedly performing up to 3,000 commercial transplants between unrelated donors and recipients, played a key role in the syndicate, flying into Kosovo regularly to perform most of the transplantations. In 2010 the Special Prosecution Office in Kosovo charged seven persons, amongst which was also a government official, with trafficking in persons, participation in organized crime, unlawful exercise of medical activity, abusing official position or authority, grievous bodily harm, fraud and falsifying (official) documents. International arrest warrants were released against the transplant surgeon and an Israeli broker. It might be the largest prosecuted case in this field to date. According to the lead prosecutor, the victims were "transported by means of threat or use of force or other forms of coercion, by fraud or deception, by the abuse of power or use of the donor victims positions of vulnerability, or by giving or receiving of payments or benefits to achieve the consent of those persons for the removal of their organs (kidneys), for the purpose of the exploitation of the donor victims". Conduct covered by the international definition of trafficking in persons provided by the UN Trafficking in Persons Protocol. In April 2013 five of the seven accused were convicted, including the clinic's director (a medical doctor) for trafficking in persons and organized crime, with prison sentences. Two defendants were acquitted. (The head of the clinic was found guilty on charges of organized crime, trafficking in persons, and co-perpetration. He was sentenced to a punishment of eight years imprisonment and a fine of EUR 10,000. He was prohibited from exercising a professional urologist for a period of two years. Also, his son (an economist) was found guilty on charges of trafficking in persons and organized crime. He was sentenced to seven years and three months imprisonment and a fine of EUR 2,500. Three medical doctors were found guilty on the count of grievous bodily harm. They were sentenced to imprisonment between one and three years. One was prohibited from practicing as anaesthesiologist for the period of one year. In order to obtain the convictions, the investigating authorities under the lead of the Head of the Special Prosecution Office Kosovo, carefully secured, collected and corroborated evidential materials, such as flight records, as well as anaesthesiology, laboratory and surgery records and utensils, so as to document, as complete as possible, medical interventions and the arrival and departure by plane and presence at the clinic of alleged organ suppliers, organ recipients and doctors. They examined and collected evidence from operating theatres, forensic evidence, investigated

the clinic's licensing history. They also traced and examined electronic mail communication, e.g. between the local head of the clinic and the foreign surgeon; they moreover sought international legal assistance from the countries involved. What triggered the investigations into this case and the raid of the Medicus Clinic, was the collapse of a 23-year-old man, who fainted in front of customs officials at Pristina (Kosovo) airport in November 2008, while waiting for his international flight. When officials raised his shirt, they discovered a fresh scar on his abdomen.

### 3.4 INTERNATIONAL ORGANIZATIONS PLAY IN ADDRESSING THE LINK BETWEEN POVERTY AND ILLEGAL ORGAN TRAFFICKING

The United Nations has always promoted the promulgation of conventions of special importance, which serve as the legal basis for many other conventions approved by other international and national organisations. The universal declaration of human rights has served as a basis for many other conventions, and as such, it also serves in the convention against trafficking in human organs. Therefore, in this section, we will deal with the trafficking of human organs from the point of view of freedoms and human rights, which is always based on the human rights convention.

Bearing in mind that the commercialization of the human body (prostitution, pornography) and any other commercialization of human organs is unacceptable, then the question arises of whether it is natural that people have the right to sell their organs for financial gain.

In this context, it should be considered whether personal freedom can reach beyond collective responsibility. Personal freedom refers to the freedom of each individual towards his life and goals, not accepting the intervention of other individuals.

This is clearly defined in Article 3 of the Universal Declaration of human rights. Although the state guarantees the right to life to every citizen without distinction, citizens are obliged by the state not to risk their lives but to also respect the lives of others. Therefore, we believe that individual autonomy is limited in organ trafficking because of this collective responsibility and some ethical claims that the potential harm of organ trafficking exceeds the rights of the individual.

Furthermore, the right to bodily autonomy for the financial gain or commercialism of the human body (prostitution, pornography, organ sales, etc.) Is prohibited in religious and legal terms. Unfortunately, organ trafficking has become one of the most important ways to obtain organs in the world today, so we must take a strong stance against it, preventing it from the individual level and onto society as a whole.

Unfortunately, this crime has already established the misuse of corpses to remove organs. However, a petition was filed before the European Court of Human Rights to establish a violation of Article 3 of the convention, *khadzhiyev and Others v. Russia*. In this regard, the court pointed out that in the special area of organ and tissue transplantation, it was recognized that the human body must be treated with respect even after death. The court noted that the rights of organ and tissue donors, whether living or deceased, are protected by the Convention on Human Rights and the additional protocol. The aim of these agreements is to protect the dignity, identity, and integrity of "everyone" who is born, whether alive or dead at the time. For the court, in view of these specific circumstances, the emotional suffering incurred



by the applicant constituted degrading treatment contrary to Article 3. In this judgment, in the case of *khadzhiyev and others v. Russia*, the court found that the removal of organs from corpses violated human rights, dignity, identity, integrity, and liberty.

### 3.5 CONCLUSION

The trafficking of human organs is a complex crime. In this sense, law enforcement institutions are confronted with wide-ranging problems when following the right path, beginning with the identification of criminal activity, the identification of the trafficking victim, the full investigation of the case, and measures taken to bring the case to court so that the criminal faces deserved punishment. Penal policies against this phenomenon should be strict because the consequences of these crimes can be fatal for the victim, and they can cause death or serious damage to physical or mental health. This negative social phenomenon is spreading with great dynamics, showing extraordinary advantages for criminal groups due to the incredibly low risk of criminal prosecution of these perpetrators.

Bearing what was addressed in mind, the final remarks are fourfold.

First, from the perspective of the evolution of human organ trafficking, it can be concluded that the beginning of the xxi century marked the engagement of organised criminal groups in human organ trafficking, that is, human organ trafficking started its commercialisation, and the illegal human organ market began to grow. Trafficking in human organs is controlled by organised criminal groups almost worldwide, and these criminal groups exploit the mismatch between “supply and demand.

Second, the governments of the states throughout the world’s supply and demand must provide balance. We consider that states should accept the opt-out system, given that countries with presumed consent laws have increased the organ donation rate by 25% to 35% more than in countries with explicit selection laws or an opt-in law. This allows for a system without presumed consent, in addition to increasing the rate of organ donation. As such, we believe that a special measure to fight this negative phenomenon, this form of organized crime, is needed. Also, the governments of each european country must meet the requirements to be members of euro transplant, scandia transplant, and balt transplant, and accept the system of presumed consent because it increases the number of potential donors.

Third, we suggest that legitimate businesses, namely private clinics where illegal organ transplants are performed, can play a crucial role in curbing trafficking and other human rights abuses by not allowing transplants to be performed in those clinics and by not supporting the supply trafficking chains. Also, the doctors and other medical support staff who work in these clinics should be addressed as they make the illegal business more profitable

Finally, given the nature of human organ trafficking, there is currently no single coherent summary that can capture different perspectives and integrate them into an article like this. As trafficking is a complex criminal offense, it creates profoundly multifaceted problems. While the views and actions are comprehensive, they are also specific and therefore require greater efforts. In preventing trafficking in human organs and developing prevention policies, states should include research and data collection, awareness-raising, public education campaigns, and training programs for potential victims as well as



professional staff (each state should identify which health workers are the main actors in organized groups regarding human organ trafficking to aid in this).

## CHAPTER 4

### COMPARATIVE ANALYSIS ON ORGAN TRAFFICKING

#### 4.1 INTRODUCTION

Organ trafficking is a global issue that thrives on the desperate need for organs and the vulnerability of impoverished individuals. While both India and the United States face challenges related to illegal organ trade, the nature, scale, and legal responses to the issue differ significantly. India, with its vast socioeconomic disparities and high demand for transplants, has been a hotspot for illicit organ trade, despite stringent laws like the Transplantation of Human Organs Act (THOA), 1994. In contrast, the United States, with a well-regulated organ donation system under the National Organ Transplant Act (NOTA), 1984, primarily struggles with black-market dealings involving underground brokers and illicit transplant tourism.

Organ trafficking is a complex and pressing global issue driven by the stark imbalance between the demand for organs and their legal availability. The black-market trade of human organs thrives on desperation; patients suffering from end-stage organ failure are willing to pay exorbitant amounts, while vulnerable individuals, often from marginalized communities, are coerced, deceived, or financially compelled to sell their organs. This illicit industry exploits both medical advancements and legal loopholes, leading to ethical, legal, and public health concerns worldwide.

The World Health Organization (WHO) estimates that thousands of illegal organ transplants occur each year, with kidneys being the most commonly trafficked organ. Factors such as poverty, weak law enforcement, and inadequate healthcare systems fuel the growth of this underground market, particularly in developing nations. At the same time, wealthier nations face challenges related to transplant tourism, where patients travel abroad to obtain illegally procured organs.

Organ trafficking is typically classified into three main categories:

1. **Trafficking of Persons for Organ Removal** – Victims are kidnapped or coerced into organ removal.
2. **Illicit Organ Trade** – Organs are bought and sold outside legal transplantation frameworks.
3. **Transplant Tourism** – Patients travel internationally to receive illegally obtained organs.

Countries across the world have established laws and ethical guidelines to regulate organ transplantation, yet enforcement gaps persist. While nations like the United States have highly regulated systems to prevent the commercialization of organs, countries like India struggle with black-market transactions despite strict legal frameworks. This comparative analysis will explore the scope of organ trafficking in

India and the USA, focusing on their legal responses, ethical challenges, and potential solutions to mitigate this growing crisis.

This comparative analysis examines the causes, legal frameworks, enforcement mechanisms, and ethical implications of organ trafficking in both nations. By understanding the differences and similarities in their approaches, this study aims to highlight potential solutions and policy improvements that can combat this illegal trade while ensuring ethical and equitable organ transplantation systems.

## 4.2 ORGAN TRAFFICKING IN USA

Under this Chapter head, the present research paper discusses, in a nutshell, the US legislative framework only after a precise glimpse of the prevailing organ trafficking global scenario. After the first successful kidney transplantation at Peter Bent Hospital in Boston in 1954 on identical twins along with the discovery of cyclosporine, rejection, and loss of graft, organ transplantation became easier.<sup>11</sup> In spite of the prominence of various international documents in preventing organ trade, the global community at large can be divided into organ-importing and organ-exporting countries<sup>12</sup>. The live donors have been brought from Moldova, Nepal, India, and Pakistan to the US, UK, Canada, and other wealthy Nations regarded as organ-importing countries.<sup>13</sup> Asia is still regarded as the hub of organ trade. In 2001 and 2002 in South Africa, the investigating officers found out that there had been international organ trafficking where most recipients came from Israel and donors came from East European countries.<sup>14</sup> The Sindhu Institute of Urology in Pakistan held that 2000 renal transplants were performed in 2005 where 2/3rd were performed on foreigners.<sup>15</sup> In China, there has been a law named Rules Concerning the Utilization of Organs from Corpses of Executed Prisoners, 1984 where kidney and liver organ trade of the executed soldiers have been legalized<sup>16</sup>.

In the USA, the main law relating to organ transplantation is the National Organ Transplantation Act of 1984 comprising several provisions to prohibit organ trafficking in between the States for financial gain.<sup>17</sup> In 1968 a Uniform Anatomical Gift Act was adopted to facilitate heart and kidney transplantation.<sup>18</sup> This particular Act had several changes in 1987 adopted by 50 states, from which year legislative provisions favoring presumed consent were provided where a person of 18 years or above have the liberty to choose or not to choose to make an anatomical gift to take effect after death. Further, in 2006 this piece of legislation had made several amendments where even a minor can take the decision to donate after death,

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<sup>11</sup>Transplant Timeline, Key Dates in the History of Transplantation, available at <http://www.wellcomecollection.org/whats-on/events/in-or-out/transplant-timeline.aspx>

<sup>12</sup>The state of the international organ trade: a provisional picture based on integration of available information, Bulletin of the World Health Organization available at <http://www.who.int/bulletin/volumes/85/12/06-039370/en/>

<sup>13</sup>Ibid.

<sup>14</sup>Ibid.

<sup>15</sup>D. A. Budiani-Saberi and F. L. Delmonico, Organ Trafficking and Transplant Tourism: A Commentary on the Global Realities available at [http://www.cofs.org/COFS-Publications/Budiani\\_and\\_Delmonico-AJT\\_April\\_2008.pdf](http://www.cofs.org/COFS-Publications/Budiani_and_Delmonico-AJT_April_2008.pdf)

<sup>16</sup>Illegal Human Organ Trade from Executed Prisoners in China, available at <http://www1.american.edu/ted/prisonorgans.htm>

<sup>17</sup>Supra at note 16, pg-71-79

<sup>18</sup>Ibid

and different states like Nevada, Arizona, and California have applied the UAGA in different manner, particularly with respect to penalties.<sup>19</sup> The United Network for Organ Sharing (UNOS) along with the US Department of Health and Services manages and procures organs for the entire US. Very recently, President Bush adopted the Organ Donation and Recovery Improvement Act financially supporting the living donors, the State of Wisconsin provided them with a tax reduction of \$10,000 for medical costs and lost salary.<sup>20</sup>

In the contemporary world illegal organ trade market is carried out at an alarming rate and the organ-importing countries or richer Nations through such trade revived third-world exploitation. Organs Watch revealed that still every year 30-50 patients from Canada undergo commercial kidney transplants from donors of third-world countries.<sup>21</sup> The underlying challenge of lack of adequate data and most Nations States differential treatment in handling this sensitive issue made the situation worse.

### 4.3 ORGAN TRAFFICKING IN INDIA

India has been regarded as a warehouse for kidneys and has been indisputably being one of the largest centers of kidney transplants in the world.<sup>22</sup> The availability of cyclosporine, new surgical methods of organ transplantation, and lack of proper medical ethics to prevent such acted as catalysts in the emerging arena of the Indian organ trade. Further, the curse of poverty coerced people to sell out their kidneys to repay any kind of debt.<sup>23</sup> India operated in 1967 first successful cadaver kidney transplant in Mumbai following the 1994 first successful heart transplant at AIIMS, Delhi to the 1995 first multi organ transplant at Chennai<sup>24</sup>. In India, the scenario of the organ trade can be divided into two main phases-

#### 4.3.1 LEGAL FRAMEWORK IN INDIA ON ORGAN TRANSFERRING

Reports of large-scale unauthorized kidney transplants in various parts of the country paved the way for this new Act, the main purpose for which was to regulate the storage and transplantation of human organs for therapeutic use, preventing any commercial dealings.<sup>25</sup> Further, this Act which has been passed only in the States of Maharashtra, Goa, and Himachal Pradesh has commercialized the concept of brain death<sup>26</sup>. The other States where the Act is not governed come under the ambit of Section 326 of the Indian Penal Code, 1860. However, the Act had suffered from several limitations like under Section 3(2) near relative (a relative, spouse, or a donor out of love and affection) can donate without any monetary

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<sup>19</sup>Ibid

<sup>20</sup>Jennifer L. Mesich-Brant and Lawrence J. Grossback Assisting Altruism: Evaluating Legally Binding Consent in Organ Donation Policy, available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.124.4214&rep=rep1&type=pdf>

<sup>21</sup>Supra at note 29

<sup>22</sup>Jayant Prakash Patel, Organ Transplantation and Its Legal Prospects available at <http://www.legalserviceindia.com/article/I279-Organ-Transplantation.html> (last visited on 12.03.2025)

<sup>23</sup>India Kidney Trade, TED Case Studies, available at <http://www1.american.edu/ted/KIDNEY.HTM>

<sup>24</sup>Parul Chopra, Doctor NDTV Cadaver Organ donation in India , available at [http://doctor.ndtv.com/storypage/ndtv/id/3774/type/feature/Cadaver\\_organ\\_donation\\_in\\_India.html](http://doctor.ndtv.com/storypage/ndtv/id/3774/type/feature/Cadaver_organ_donation_in_India.html)

<sup>25</sup>See note at 40 , see also Nupur Nadir ,Law and Medicine : An Analysis Of Organ Transplantation Law in India , available at <http://www.legalserviceindia.com/article/I224-Organ-Transplantation-Law-In India.html> See also Mohd Haris Usmani , Human Organs Transplantation , available at <http://www.legalserviceindia.com/article/I179-Human-Organs-Transplantation.html>

<sup>26</sup>Ibdi.

transactions indirectly permitting illegal kidney marriages.<sup>27</sup> Further, there has been a gross misuse of section 9(3) where a person not being a close and near relative can even donate his organ to the recipient out of mere love and affection; hence it was reasonable to assume that money can change hands between middlemen and lack of adequate stringency since such offence was non cognizable offering very less penalty amount of Rs 10, 000 and of five years punishment indirectly produced greater deleterious societal impact.<sup>28</sup> On basis of the Corruption Perception Index compiled by the Transparency International, out of 102 countries according to the latest report 2009-10, India ranked second in kidney trade.<sup>29</sup> In various surveys conducted it has been found that 72% of the Indian population were willing to donate the eyes but less than 50% were willing to consider solid organ donation, 74% Hindus, 72% Christians, 58% of Muslims were willing to consider organ donation<sup>30</sup>. In Karnataka and Tamil Nadu maximum organ transplantation took place. Organ Trafficking in India is accompanied by the menace of corruption.<sup>31</sup> The Authorization Committee established under the Act which has been entrusted with granting power for organ transplantation, approved thousands of paid donor transplants after getting affidavits from donors coming under purview of Section 9(3) and to everyone's surprise it had been found in reality there was no affection or love between donor and recipient and they have never met each other to be able to donate the organs and the members of the Committee were bribed by middlemen having political nexus<sup>32</sup>. Recently American scholars have found that in Chennai, the Indian Kidney hub more than 3000 individuals had sold the kidney receiving far less money than what had been promised and their instead family poverty has been increased<sup>33</sup>.

Considering the above legal provisions and definitions of organ trafficking, it is evident that any kind of illegal transaction related to human organs is subject to "organ trafficking". India is well known as the largest kidney trader globally and the first kidney transplantation succeeded in Mumbai in the year 1967. The "Transplantation of Human Organ Act" was enacted in 1994 and was proposed to control organ trafficking. However, it was observed that illegal organ trading got some more scope along with corruption due to this Act. Under this Act, the "Authorization Committee" was established which allegedly approved transplantation of organs under "Section 9(3)" on the basis of an "Affidavit". It was later found that there was no affection or any relation between the organ receiver and the donor.

According to a report, there was a deal of more than 3000 kidneys that took place in the state of Tamil Nadu where donors didn't get the said amount. The infamous Amit Kumar case exposed the level of organ trafficking in India where fake promises were given to a lot of laborers who had undergone treatment as live donors for Rs. 3 Lakhs. Amit Kumar allegedly charged around \$50,000 per operation and over 500

<sup>27</sup>ibdi

<sup>28</sup>ibdi

<sup>29</sup>Body Parts Trade(Body Case) available at <http://www1.american.edu/TED/body.htm>

<sup>30</sup>Supra at note 23

<sup>31</sup>Illegal Organ in Human Organs , Letter By the Chairperson to Prime Minister , National Human Rights Commission , available at <http://nhrc.nic.in/Illegal%20Tread%20In%20Human%20Organs.html>

<sup>32</sup>Sandhya Srinivasan, Will the law against organ trade remain a moral victory? Available at <http://infochangeindia.org/health/analysis/will-the-law-against-organ-sale-remain-a-moral-victory.html>

<sup>33</sup>Coercion in the Kidney Trade ?A Background Study on Trafficking in Human Organs Worldwide, Sector Project against Trafficking in Women , available at <http://www.gtz.de/de/dokumente/en-organ-trafficking-2004.pdf>

illegal organ transplants took place by the kidney racket kingpin. It is also reported that more than 2000 kidneys are sold every year in India. According to an NGO “Bachpan Bachao Andolan”, corpses of children without organs were found by them, but such cases are usually reported as kidnapping because it is simple for the Police to book those cases as abduction and murder on unknown people instead of doing investigation on organ rackets. According to a report by Human Rights, India witnesses over 44,000 missing reports of children every year and most of such cases are related to organ trafficking

In several cases, organ trafficking is also connected with “human trafficking”. The Constitution of India has also granted the “Right against Exploitation” as a Fundamental Right. This way, no citizen of India must be subjected to illicit trafficking under this law. In addition, the “Right of a Person over his/her own body” and “Right to Health” have been announced as an essential element, wherein every citizen of India has the right to live a dignified life<sup>34</sup>. The “Section 360” of the IPC considers offenses associated with kidnapping. However, if someone commits child trafficking for organ trade, they are also subject to penalty.<sup>35</sup>

### **Cadaver Organ Transplants Case<sup>36</sup>**

A hospital in Karnataka was found involved in illegal kidney transplants using forged consent documents. The case exposed weaknesses in organ donation regulations and enforcement. The High Court emphasized the need for strict verification processes and mandated hospital accountability for organ donations.

The “Transplantation of Human Organ Act, of 1994” was enacted to regulate organ transplantation to save the lives of humans from deaths caused by organ failures. This law was enacted to promote organ donations and this donation was restricted to only close relatives due to fondness and love. Only consensual donation is allowed by the Act for corpse donors. Even the families of the departed person have the right to give their organs if they have not opposed to any of those donations in their lifetime. If the deceased person’s family doesn’t allow those donations, such consent would be deemed void and useless.

There were certain issues with the Act of 1994, which were challenged by an Amendment Act passed in 2011 and its provision was raised to West Bengal. This new Act enabled living persons to donate their organs. Doctors must get their parents informed about organ donation as an option, either to withdraw from or allow those donations. Failing to do so may attract punishments for doctors according to this Act. However, this Act also had some criticisms as the Authorizing Committee’s role was still not clear and many medical professionals didn’t understand brain death due to the lack of infrastructure in Public Hospitals in villages.

### **4.3.2 AMENDMENT OF TRANSPLANTATION OF ORGAN ACT 1994**

<sup>34</sup>Article 21 of the Indian constitution, 1950.

<sup>35</sup>Section 12 of Transplantation of Human Organ Act, 1994

<sup>36</sup>CRIMINAL APPEAL No.1610/2017, Rangaraju @ Vajapeyi vs State Of Karnataka on 30 May, 2023.



The Delhi High Court set up a committee in 2004 to examine the provisions of the 1994 Organ Transplantation Act. Thereafter the new Amendment Bill which passed in Rajya Sabha in 2009, finally came into being in the form of fully fledged enactment in February 2011 further being extended to West Bengal<sup>37</sup>. The Act also permits donations from living persons with the inclusion of grandparents and grandchildren. Further, the important notable changes in the new Act are that the Intensive Care Unit (ICU) doctors are now bound to inform the patient or relative about the option of organ donation and ascertain whether they would consent to the donation and in case of breach of provisions penalty has been extended to 10 years and a fine of 5- 20 lakhs<sup>38</sup>. Furthermore, there are also new provisions for Organ Swapping and Organ Retrieval Agencies<sup>39</sup>. However, it is still not clear whether increasing penalty provisions would curb commercial organ dealing<sup>40</sup>. There have been expert opinions favoring cadaver donations and also granting of financial incentives along with health insurance packages for live donors. However, still the new Act is not immune from criticisms like the ever-existing problems are problematic jurisdictions of the Authorization Committee where donors and recipients are from different States<sup>41</sup>. The role of Advisory Committees<sup>42</sup> under the present Act is not clear so the functions of the Advisory Committee. Still in India the concept of brain stem death is not known to many medical professionals and only very few private hospitals in metropolitan areas have adequate infrastructure.

#### 4.4 CONCLUSION

Despite the fact that there are just 0.6% donors over 1 million people in India, organ trade is still rising significantly. There is a demand for over 200,000 kidney donors but only 3500 donors could be managed. Hence, there is a uniform law needed in India to control the number of cases of organ trafficking in the near future. Because of existing superstition and religious beliefs, it is not easy to seek the consent of the family of the deceased. Due to this reason, the organ donation rate is fallen down substantially after the enactment of Act of 1994. Even if the deceased had given consent for the removal of their internal organs in their lifetime, their family doesn't give consent for removing organs.

So, it is important the law should give preference to the deceased' consent as it is their right to choose whether to donate their organs after death and make decisions on their own body. It is very important to generate awareness in India related to organ donations to meet the rising need for organs to save lives. In

<sup>37</sup>Kaushiki Sanyal, Legislative Brief, The Transplantation of Human Organs (Amendment Bill), 2009, PRS Legislative Research, available at <http://www.prsindia.org/uploads/media/Organ%20transplantation/Legislative%20Brief%20%20Transplantation%20of%20human%20organs%20Bill%202009.pdf>

<sup>38</sup> Ibid 4

<sup>39</sup>Illegal Organ Transplant can attract 10 year jail, Special Correspondent, August 13, 2011, The Hindu, available at <http://www.thehindu.com/news/national/article2351612.ece> See also Vineeta Pandey, Changes in Organ Transplant Act to benefit Patients, September 18, 2009 available at [http://www.dnaindia.com/india/report\\_changes-in-organ-transplant-act-to-benefit-patients\\_1291190](http://www.dnaindia.com/india/report_changes-in-organ-transplant-act-to-benefit-patients_1291190)

<sup>40</sup> Ibid

<sup>41</sup> In Kuldip Singh & another vs State of Tamil Nadu and others, Appeal (civil) 156 of 2005, March 31, 2005, the Supreme Court on basis of a petition regarding the dispute as to place of Authorization Committee from both donor and recipient belonging to Punjab and concerned transplantation in the hospital in Tamil Nadu the Supreme Court gave the judgment that the Authorization Committee of Punjab will entertain the matter

<sup>42</sup> Ibid. Clause 13(A) under the New Act provided for the creation of an Advisory Committee.



addition, clearer law is needed for the operations of the “Authorizing Committee” to remove illicit practices and corruption. Certain mechanisms are needed to improve transparency in the medical field to take down the link with organ trafficking.

India has a dedicated law, the Transplantation of Human Organs and Tissues Act (THOTA), 1994, aimed at preventing organ commercialization. However, despite amendments and stricter provisions, enforcement remains weak due to corruption, inadequate monitoring, and socioeconomic vulnerabilities.

India has been a global hotspot for organ trafficking due to poverty, lack of awareness, and a high number of patients in need of transplants. The illegal trade is facilitated by organized crime networks that exploit financially desperate individuals.

The USA, governed by the National Organ Transplant Act (NOTA), 1984, has a structured and transparent Organ Procurement and Transplantation Network (OPTN), minimizing the risk of internal organ trafficking. However, black-market dealings, transplant tourism, and financial inequities continue to pose ethical concerns.

The United States, while having a well-regulated system, faces challenges with wealthy individuals seeking illegal transplants abroad (transplant tourism), black-market brokers, and disparities in organ allocation based on socioeconomic factors.

**Exploitation of the Poor:** In India, individuals from economically disadvantaged backgrounds are often coerced into selling their organs, violating human rights and medical ethics.

**Consent and Coercion:** While informed consent is legally mandated in both countries, there are cases where donors are deceived or pressured. In the USA, there have been concerns about racial and economic disparities in organ allocation, leading to accusations of an unfair system that favors the wealthy.

**Medical and Professional Integrity:** Corruption and complicity of healthcare professionals in forged documentation and illegal transplants have been a major issue in India. Although the USA has stricter oversight, isolated cases of unethical medical practices still arise.

## CHAPTER 5

### CONCLUSION AND SUGGESTIONS

It may be concluded that human trafficking for organ removal has become a serious problem that requires international attention. It consists of two distinct phenomena that are easily distinguished in theory but can be difficult to distinguish in practice. The first phenomenon refers to the situation when a person is trafficked for the purpose of organ removal and all subsequent acts of trafficking are directly related to the trafficked person. On the other hand, Trafficking in human organs, can only take place in relation to the organs, where acts of trafficking could only take place in relation to the organ itself. The current thesis is concerned with defending those who have been victimised by human trafficking for the purpose of having their organs removed illegally and are now in they find themselves in a hopeless situation. Despite the

importance of the issue, state's unwillingness to be bound by specific and detailed obligations to protect victims of human trafficking for organ removal is reflected in the Palermo Protocol's disjointed provisions and the limited number of signatories to the COE Convention against trafficking in human organs. In addition, the adoption of the COE (Council of Europe Convention against Trafficking in Human Organs) Convention, which was intended to complement the framework of human trafficking, resulted in significant overlap with the Palermo Protocol on harassment in cases where an organ donor is involved. According to the analysis presented in the substantive chapters of this thesis, both frameworks can be applied equally in cases involving the recruitment and solicitation of a living organ donor without consent for financial gain. It was also noted that the degree of such overlap may vary depending on the national laws of each state. Nevertheless, it is impossible to overlook the Protocol's role in the fight against human exploitation. It was the only means in which the undefined and less regulated phenomenon of human trafficking was included in the political agenda of the international community. Despite being incomplete and imperfect, the protocol was the first to pave the way for change. The inclusion of illegal organ removal as a form of human trafficking<sup>234</sup> was a turning point in international law. As far as the COE Convention is concerned, it has been significant in bringing the issue of trafficking in human organ to the attention of the whole international community and clearly defining it as a crime. This covers a number of illegal methods involving the removal of organs from a criminal law perspective. Most notably, it aims to close loopholes in international transplant law that have existed for many years by addressing a variety of crimes associated to transplantation, such as human trafficking for the purpose of removal of organs. Both the Palermo Protocol and the COE Convention criminalize and prosecute actors involved in trafficking in person for organ removal, but they differ from each other in determining the elements of the crime. When comparing the two frameworks, it can be seen that the method of determining the crime mainly affects the illegal removal of organs and the safety of the victims. Furthermore, in general, trafficking in persons for the purpose of organ removal carries a harsher punishment for offenders than trafficking in human organs in national legal systems. Therefore, the Palermo Protocol should be the main anti trafficking instrument that constitutes the crime of illegal organ removal from trafficked person. If no means element of the Palermo Protocol's definition is identified under the domestic law of a State, the concept of the abuse of a position of vulnerability must be clearly understood in order to prosecute traffickers involved in the crime of human trafficking for organ removal. In any case, the Palermo Protocol fits within the purview of the COE Convention, so the former can be used to supplement the latter. As a result, both frameworks can be used interchangeably. In this way, the two frameworks can be applied interchangeably. Regarding organ donors, the thesis emphasizes the fact that victims of both types of organ trafficking frequently lack access to the protection to which they are legally entitled since they are not identified as such victims. It is to be noted that the safety of victims must be

given priority while taking any measures to address the issue of trafficking in person for organ removal. Failure to identify victims is a lack of anti-trafficking measures with an effective enforcement mechanism as well as a lack of coherent means against human trafficking for organ removal. Similarly, it has been found that the protection of victims can also be dealt with from a different perspective, including a human

rights framework that focuses on the victim's rights. Due to its complex cross-border nature, human trafficking requires a coordinated, multi-disciplinary national and international response. As far as our country is concerned, to combat human trafficking several laws were enacted by the Indian government. For example, "The Immoral Traffic (Prevention) Act, 1956" (hereinafter ITPA) - deals with trafficking for commercial sexual exploitation. A host of statutes including "The Bonded Labour System Abolition Act, 1976", "The Child labour Act, 1986" and "The Interstate Migration Workman's Act, 1979" are also enacted to cover other aspects of trafficking. Furthermore, several other statutes were enacted that directly or indirectly deal with human trafficking; "The Juvenile Justice Act, 2015" "Protection of Children from Sexual Offences Act, 1973" and major Act like the "The Indian Penal Code, 1860" (hereinafter IPC) is also used to address components of offences committed during and after trafficking for commercial sexual exploitation. Moreover, Article 23 of the Indian Constitution explicitly "prohibits traffic in human beings and forced labour" and imposes negative as well as positive responsibility on the states to address the problem of human trafficking and provide support to the victims. Despite Constitutional guarantees and a plethora of laws, trafficking continues to thrive in the country. The domestic laws dealing with trafficking are not updated to effectively combat this modern slavery. The current legislations especially deal with one aspect of human trafficking i.e., Prostitution or commercial sexual exploitation, forced labour exploitation. Despite the fact that there are a numerous laws to deal with diverse aspects of human trafficking, there is no comprehensive legislation specifically concluded to deal with all forms of human trafficking, including trafficking for organ removal, which remains endemic in the country. India signed the "Palermo Protocol" in 2002 and ratified it in 5th may, 2011. However, the definition of trafficking in person has been included in national law in 2013 by Criminal law Amendment Act, 2013 under the IPC. Two new sections, 370 and 370A, were added to define "human trafficking." However, it is contended that the definition was produced half-heartedly and that a significant component (a position of vulnerability as an act) was left out of its scope. In a recent development concerning human trafficking, the government solicited proposals for the "Trafficking in Persons (Prevention, Care, and Rehabilitation) Bill, 2021", which broadened the nature of trafficking offences. However, the bill is yet to become a reality. The main legislation relating to trafficking is "The Immoral Traffic Prevention Act (ITPA) 1956". The current Indian anti-trafficking law lacks clear guidelines on who is subject to prosecution and who should be protected. The first step in prevention would be to amend the existing ITPA to define a human trafficking, trafficker and buyer of trafficked person clearly and introduce stronger punishment for them. The second would be to remove criminal liability in any form for victims and survivors. The two sections of ITPA mentioned here are Section 7 which needs to be strengthened to punish traffickers and johns and deletion of Section 8 under which women are picked up for being forced to stand in a public place by pimps and brothel managers to solicit for customers. The lack of understanding of trafficking by the legal system could arise from one or more of these factors: first, there is no definition of "human trafficking" or "trafficker" under the Act. As a result, the police and the judiciary are completely ignorant of the complexities involved in the trafficking of persons, as well as the various types of traffickers and their strategies. Neither the courts nor the investigative agencies try to listen to the trafficked woman and her

experiences. Second, the Act also focuses on establishing “purpose of prostitution” for each crime that easily diverts attention from trafficking. For example, in order to convict a trafficker for keeping a brothel, it is necessary to establish that prostitution was taking place. So, if a trafficked woman is kept in captivity for an extended period of time, it does not constitute an offence under Section 3 unless the place meets the requirements of “brothel.” The Act thus overlooks what constitutes human trafficking—the elements of force, deception, and coercion that occur overtly and covertly over time. Third, despite the fact that the definition of prostitution has changed from “the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise” to “sexual exploitation or abuse of persons for commercial purpose,” there is no discernible shift in lawmakers and enforcers attitudes from attempting to curb prostitution to attempting to curb trafficking. It is unfortunate that the legislation intended to stop trafficking already lacks a proper view of the issue. This is evident in the judicial decisions that penalize both traffickers and prostitutes. It is necessary for Indian courts to develop comprehensive jurisprudence on trafficking. As far as IPC is concerned, the IPC has a more limited jurisdiction in order to deal with the various trafficking-related activities that don’t perfectly fit into the categories human trafficking for organ removal or other form of trafficking. Despite having a specific legislation to curb the menace of organ trade, trafficking in human being for the purpose of organ removal are widely prevalent in India and is increasing at an alarming rate. The Transplantation of Human Organs and Tissues Act, 1994 punishes commercial dealings in human organs or tissues not the offence of human trafficking for organ removal. However, organ commerce and kidney scandals are being regularly reported in India and the country is considered as one of the biggest markets for organ trafficking despite having a specific legislation on the matter. At this juncture we can say that there is need of comprehensive legislation which deals with all form of trafficking including human trafficking for organ removal. The new legislation must therefore define trafficking as something other than prostitution and encompass trafficking for other objectives, such as domestic work, marriage, slavery, servitude, practices similar to slavery and removal of organ, etc. It must also consider the many human rights violations that take place over the course of human trafficking (and occasionally even during attempts at rescue), offer compensation to the victims, and guarantee access to fundamental freedoms. The burden of proof under this new law is on the accused to show that they are not involved in human trafficking. To deal with the complexity of trafficking offences, the judiciary needs to be educated and trained. More importantly, the new legislation must be supported by a comprehensive strategy to combat trafficking that includes prevention, rescue, repatriation, reintegration, and rehabilitation. This strategy must be based on international standards and principles stated in conventions and treaties, such as the Human Rights Standards for Treatment of Trafficked Persons.

## Suggestions

1. An urgent need exists for comprehensive national laws to address all facets of trafficking. As human trafficking will affect the criminal justice system, the government should concentrate on a victim-centered and human rights based approach.

2. To guarantee the rights of victims, state should create a system that has the expertise to develop the legal framework and comprehensive policies against human trafficking.
3. In order to prevent all form of trafficking including human trafficking for organ removal, government should conduct campaigns for the general public, to promote awareness.
4. State must have legislative and other measures to protect the rights and interest of the victims by giving victim access to free legal aid.
5. State should ensure with complete respect for their human rights, that the victims of trafficking are protected and helped.
6. In order to foster cooperation and fight human trafficking, it is necessary to improve information-sharing and data-collection capabilities.
7. When a victim of trafficking has undergone organ removal, it is important to protect their physical and mental well-being by offering medical attention, counselling, and support.
8. Law should not harsh towards victims of human trafficking for organ removal so that they should be encouraged to approach the authorities.
9. There is a need to investigate, prosecute and punish corrupt officials engaged in or facilitate trafficking in persons and promote a zero-tolerance policy against those corrupt officials.
10. For the time being state should ensure that there must be synergy between different legislations and institutional support mechanisms.
11. The amendment proposed by the Ministry of Women and Child Development of India in The Immoral Traffic (Prevention) Act, 1956 should be made to define human trafficking.
12. The Palermo protocol should require nation states to prioritize the welfare of victim above the prosecution of the traffickers with intent to provide sufficient protection.
13. The Palermo protocol (Arts. 5 to 6) requires states to criminalize human trafficking. There is need of mandatory provisions under which nation states are required to protect the victims or to take preventive initiatives.
14. Government should establish appropriate mechanisms to strengthen international cooperation to investigate and prosecute trafficking facilitated by the use of internet.
15. J.S. Verma Committee recommended that there is need of a special law to tackle the offence of human trafficking. (J.S. Verma Committee recommendation as it is taken)
16. J.S. Verma Committee recommended that the offence of trafficking is much more intricate and complex than traditional offences. The country needs a specialized police force to deal with human trafficking cases. (J.S. Verma Committee recommendation as it is taken).