

ANALYZING ORGAN TRANSPLANTATION LAWS IN INDIA- AN OVERVIEW

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Abstract

Organ transplantation is a procedure where the dysfunctional organ of a recipient is replaced with the working organ of the donor. However, in the veil of this procedure a lot of poor people were conned of their organs and illegal trafficking of the same became a well connected business hub. Government of India came up with a legislation in 1994 -the Transplantation of Human Organs Act, which made organ sale a criminal activity. The legislation laid down regulations for removal, storage, transplantation of the human organs for therapeutic purpose and prevents the commercial dealings of the same. An important feature of this law is that it strictly prohibits the exchange of money between the recipient and the donor.

This paper attempts to address the features of organ transplantation in brief, it traces the evolution of organ transplantation laws in India. It also touches upon the impact of foreign legislations and their role in development of the Indian laws with a comparative study. Lastly, it addresses the shortcomings of these laws and suggests the improvements measures that can be incorporated to make the existing laws more efficient.

KEY WORDS-

Commercial dealings, Illegal trafficking, Organ transplantation, Therapeutic purpose, The Transplantation of Human Organs Act.

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INTRODUCTION

“Desperate diseases require desperate remedies”

The significance of the above stated quote with respect to the research paper is self-evident. Dysfunctional organs in the body of a patient are desperate and the procedure of replacing them with the working organs has to be palpably desperate too. The process where the dysfunctional organ of a recipient is replaced with the working organ of the donor is known as Organ Transplantation². It is a boon to the medical industry and a proud scientific achievement in the history of medical science. However, the successful innovation has also raised questions related to ethics, fair practices since, in the veil of this procedure a lot of poor people were conned of their organs and illegal trafficking of the same became a well connected business hub in the country. One major reason for increase in illegal trading and trafficking was the number of people needing the transplant outnumbering the functional organs that are available which leads to severe competition which in turn severely testes the principles of distributive justice and transparency. Transplantation process unlike any other cure is unique in nature as it requires public sanction without which there are huge chances of it being collapsed. Although living people donate the organs for their dear and near, however the main source of the functional organs is the organs of deceased which is highly dependent on the consent of the family members. Moreover, this consent is framed not just by creditability point of view but is also influenced by political, religious and cultural factors. The challenge that awaits on the other hand is to ensure just and fair policy in allocating the available organs to the large populace on the waiting list.

The primary source that deals with the topic of transplantation of organs is an act passed by the Parliament called Transplantation of Human Organs Act which was passed in 1994 in order to curb the inefficient health care system and illegal trafficking of the organs. The legislation laid down regulations for removal, storage, transplantation of the human organs for therapeutic purpose and prevents the commercial dealings of the same; the act heralded a new era in Indian medicine law. Public health as a subject comes under the scope of State List in the seventh schedule of the Constitution of India therefore, the health related legislation and matters are dealt by each state individually. The state of Maharashtra, Himachal Pradesh and Goa were the initiators of this act and subsequently all the states adopted the same except the state of Jammu Kashmir and Andhra Pradesh³. Despite the strict regulatory framework, there have been cases where the commercial dealings of the organs were reported. Owing to which the amendments were proposed by the states of West Bengal, Goa and Himachal Pradesh in the year 2009 in order to do away with the irregularities in the efficacy, impact and the relevance of the act. The Parliament passed the amendment in the year 2011 and notified the rules in 2014⁴.

² Center for Bioethics, *Ethics of Organ Transplantation*, February, 2004, available at http://www.ahc.umn.edu/img/assets/26104/Organ_Transplantation.pdf (Last visited on June 1, 2016).

³ Organ India, Laws and rules governing organ transplantation in India, available at <http://www.organindia.org/laws-made-easy/> (Last visited on June 1, 2016).

⁴*Ibid* 2.

TRACING THE EVOLUTION OF ORGAN TRANSPLANTATION

The process of transplantation in India started with the transplantation of kidney in the 1970s after which it is leading in this arena in the Asian sub-continent⁵. Each decade the evolution got a step further which started with mastering the surgical techniques in the first decade along with immune suppression. The next decade marked success of evolution where the number of transplant rose phenomenally. However, the trading of the organs of the economically weaker sections of the society i.e. commerce in organ donation became an integral as well as acceptable part of the procedure. The two major problems faced by introduction of the process of transplantation in the Indian context is donation and allocation. This broad classification covers all the encompassed controversies, illegal practices about the process of organ transplantation and the last decade hinges between struggle to evolve the deceased (or cadaver) donation program and to curb the commercialization of the living donation program.

The legislation Transplantation of Human Organs Act was passed in order to limit the expanding trade and commerce of the organs and its main feature was criminalizing the organ sale activity⁶. This legislation was written in lines with the UK Transplant Act where the three points capture its essence- accepting the brain death under the ambit of definition of death, to stop the commercial dealings in organs and to define the scope of first relative who could donate the organs without seeking for permission from the government. Starting from the scope of living donation, the act defines the ambit of living persons who can donate their organs without any legal formalities. These are called the first relatives and include father, mother, sisters, brothers, daughter, son and spouse⁷. It is a mandatory requirement for the first relative to provide proof of relation either by a legal document or by genetic testing without which the person will not be allowed to donate. The 2011 amendment of the act also added grandparents within the ambit of first relative. In case of no first relative in sight, the donor and the recipient have to follow a lengthy process of verification in order to take permission from the government appointed authorized committee⁸. This verification is in order to ensure that no commercial dealing is taking place and the organs are donated purely out of affection or altruism for the recipient.

As India accepts the concept of brain death, the act defines the declaration of the same. There has to be a pair of two doctors nominated by the authority under the government, one of which mandatorily be a neurologist who provide certificate of non- functioning of brain six hours apart⁹. After the certification, the organ extraction from a brain dead becomes legally acceptable and the said organ can be transplanted to the matched recipient. The transplantation activity in each State and Union Territory is regulated by forming a Committee and an Authority namely Authorization Committee (AC) and Appropriate Authority (AA)¹⁰ whose main purpose is to fairly regulate the authorization process of approval or rejection of transplantation process between recipient and the donors other than the first relatives. Their primary duty is to ensure that there is no exploitation of the donor for monetary consideration or any sort of helplessness which weakens the donor in exchange of the organ. The joint application by the donor and the

⁵ Sunil Shroff, *Legal and Ethical aspects of Organ donation and Transplantation*, Indian J Urol. 348 (2009)

⁶ The Transplantation of Human Organs Act, 1994, § 19

⁷ The Transplantation of Human Organs Act, 1994, § 2(i)

⁸ The Transplantation of Human Organs Act, 1994, § 13

⁹ The Transplantation of Human Organs Act, 1994, § 3(6)

¹⁰ *Ibid* 7

recipient is considered which has to be supported by an essential personal interview in order to find the real motive of donation (which ideally should be love and affection) and also to ensure that the donor has complete knowledge of the potential risks involved in the surgery.

More precisely, the role of the Appropriate Authority is to regulate the process of removal, storage and transplantation. The role is not just limited to ensuring safe ends of medical aspect but also to keep an eye on whether the hospital conducting the transplantation is authorized to do so. The work includes inspecting and granting of the registration to the hospitals, enforcing the requisite standards in order to conduct the transplant, it also has the authority to qualitatively on regular basis inspect the environment of the hospital in order to ensure the compatibility with the procedure of transplantation. Following up medical care of the recipients and the donors, conducting investigation against the complaint of any breach of any provision, suspending or cancelling the license of the hospital in case of error are also significant works of the Authority¹¹.

LOOPHOLES IN THE INDIAN TRANSPLANTATION LAWS

Sub-clause (3), Clause 9, of Chapter II of the Transplantation of Human Organs Act states that-

"If any donor authorises the removal of any of his human organs before his death for transplantation into the body of such recipient not being a near relative as is specified by the donor, by reason of affection and attachment towards the recipient or for any other special reasons, such human organ shall not be removed and transplanted without the prior approval of the Authorisation Committee."

According to experts, this clause allows exchange of organs for "unscrupulous reasons", i.e., parties end up finding donors whose reasons to develop "affection or attachment" are for monetary rewards. This is also illegal as Indian laws do not allow exchange of money for organ transplantation purposes¹². Experts have been asking for an amendment which allows such exchange for a consideration, which is decided by law, to ensure that the organ transplantation system does not end up being commercialized. This claim is supported by the existing demand – supply gap. According to statistics, there is a need for 1.8 lakh kidneys per year, but owing to severe lack of availability, only 10,000 to 12,000 are operated upon. As a result, majority of the patients- about 80 per cent of all patients, depend upon dialysis for about two years and thereafter die due to non-availability of kidney donors. For the remaining 20 per cent, donors are found and convinced, after a payment of a hefty sum of money, to allow transplantation operation to take place¹³. Thus, India could consider specific criteria for payment, like Singapore, wherein the exchange of organs for an amount fixed by the government is considered

¹¹ *Ibid* 7

¹²The Tribune, *Indian Kidney- Global Trade*, February 9, 2008, available at <http://www.tribuneindia.com/2008/20080209/saturday/main1.htm>(Last visited on 22nd June, 2016).

¹³*Ibid* 1.b

legal¹⁴. The government of India, could emulate Singapore and create a national registry for the long-term follow-up of living donors and providing them with some health insurance¹⁵.

Owing to such demand-supply gap, there is a growing market for illegal transplant and trade of human organs. Organ trafficking has been defined by the World Health Organization (WHO) as- “a commercial transplantation, where there is profit, or transplantations occur outside of national medical systems.” WHO statistics in 2007 suggested that organ trafficking accounted for 5-10% of kidney transplants performed annually across the globe, and that in India, around 2,000 Indians sold their kidneys annually¹⁶. On an average, they received a compensation of \$1070 or roundabout 70,000 Indian rupees in exchange of their organs and it was largely spent on debts, food, and clothing.

Over the years, several major rackets have been busted, which prove that illegal organ trade and transplantation still prevails in the country even when a legislation strictly prohibiting it exists in the country. These include¹⁷-

- 1- 2003- An illegal transplant racket in Punjab was uncovered.
- 2- 2007- Police uncovered an illegal kidney trade involving fishermen
- 3- 2008- Amit Kumar, a man who posed as a doctor, illegally removed kidneys of people from different states and transplanted them to high-paying patients in Gurgaon.

Transplantation of Human Organs Act, also calls for creation of an “authorisation committee”- to look into that non-related donor donate out of affection. However, it is to be noted that these committees, are not transparent about sharing information with the public. There is no information available in the public domain about the extent of applications for transplant that are accepted and likewise rejected¹⁸. Data compilation will help in carrying out systematic research on¹⁹-

- (a) legal live related kidney donors
- (b) legal live unrelated kidney donors
- (c) illegal live unrelated donors and other categories

Thus, there is a need to ensure that authorisation committees collect, assimilate, interpret and disseminate information pertaining to donation of organs by “non-related” individuals by making

¹⁴ The Wall Street Journal, *Obstacles to Organ Donation in India*, September 13, 2012, available at <http://blogs.wsj.com/indiarealtime/2012/09/13/indias-many-obstacles-to-organ-donation/>(Last visited on 22nd June, 2016).

¹⁵*Ibid* 3.

¹⁶ Live Mint, *Why organ trafficking thrives in India*, May 28 2015, available at , <http://www.livemint.com/Politics/pxj4YasmivrvAhanv6OOCJ/Why-organ-trafficking-thrives-in-India.html>(Last visited on 22nd June, 2016).

¹⁷*Ibid* 5.

¹⁸ The Practical Lawyer (supremecourtcases.com), *How to stop organ trafficking? A Critique of the Transplantation of Human Organs Act in India* , available at http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=15820(Last visited on June 22, 2016).

¹⁹*Ibid* 7.

it statutorily mandatory. Furthermore, there is a need to look into the functioning of these committees and how regularly they meet and work.

The definition of organ in the Transplantation of Human Organs Act is not “exhaustive” and does not cater to the needs of the act in the present times. The current act defines organs as-“any part of the human body which is not replicated”. This would include internal organs like kidneys, liver, etc. In cases of “brain death”, this definition would include eyes (corneas) and ears as they were covered by earlier legislations²⁰. However, this definition would end up excluding organs which could re-grow over a period of time and not immediately like- skin, pancreas and liver. These organs too are extremely vital and could be lifesaving in different instance, like²¹-

1-Skin could be utilized for treating burn patients

2-Part of liver or pancreas that could be transplanted to the needy, but is not covered under current definition.

3-Access and reuse of human tissue, left over as waste and residuals post some types of routine surgical procedures should be addressed legally.

Thus, there is a need to enhance the scope of the definition of organ and modify it to accordingly be used in as many medical contingencies as possible. The Supreme Court, has previously suggested that the definition be amended thus²²-

“human organs means any part of a human body consisting of a structured arrangement of tissues which include cornea, bone, artery, skin, tendon, ligament, heart valves, muscular, skeletal and amnion, kidneys, liver, pancreas, heart, lungs, intestines or any other portion of a human body”

LACK OF AWARENESS TOWARDS ORGAN DONATION

India’s current donation rate stands at 0.08 per million population. This is in sharp contrast to countries like USA, where the cadaver donation rate stood at 25 per million people in 2010, according to statistics from the Council of Europe. Thus, almost two lakh patients annually wait in India for a transplant. A major hindrance to promoting transplant is lack of awareness. A major chunk of Indian populace is unaware of the concept of cadaver donation. There are several myths and misconceptions that deter public from participating in cadaver donations²³.

The populace is majorly unaware about the difference between coma and brain death and the impact they put upon organ transplant. A donor’s organs have a sustenance period that lasts between 24-74 hours post brain death. Post which, they start decaying. It is to be noted that coma means that the person is “asleep”, while brain death means that the person has lost the operation

²⁰Ibid 8.

²¹Ibid 9.

²²Ibid 10.

²³The Hindu, Lack of awareness hampers organ donations in India, December 30, 2012, available at <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/lack-of-awareness-hampers-organ-donations-in-india/article4254740.ece>(Last visited on June 22, 2016).

of his/her brain. Thus, it is usually difficult convincing family members that in cases of brain death, they should allow the transplant process to be expedited²⁴. Social myths like rebirth, especially the notion that retaining the whole body is important to having a disability free reincarnation also deter potential donors and their respective families from contributing to transplant associated causes²⁵.

In an all India survey, conducted across 10 major Indian cities involving 600 participants, an attempt was made towards understanding this lack of willingness to donate. It was found that a major factor behind willingness/non-willingness to donate organs among some religions was because of their existing religious beliefs as cited by roughly one-third of the total participants. Thus, it was found that primarily religious beliefs were deterring individuals from donating their organs. About 39.8% of the total respondents were not prepared to have their body “be cut open/organs taken out from their body after their demise” owing to religious reasons and family refusal. Religious beliefs, were found to be akin to the logic relied upon in Saudi Arabia, which indicated that concerns about inadequate healthcare after donation, lack of family support, and lack of information about organ donation were the primary reasons for lack of willingness to donate. It was also observed that even amongst literate section of the masses, the confidence to donate was not enough. It was observed that with the exception of Delhi, where about 51 per cent of the surveyed individuals knew about Transplantation of Human Organs Act, the extent of awareness amongst masses was low. By educating potential donors and general masses about the act, could help in generating greater deterrence towards illicit organ trade. Lack of awareness was also responsible for nearly one-third of the participants who were previously not possessing donor cards, immediately signed up for procuring one. It was also found that while eye donation was more widely accepted among the participants other forms of transplantation were not as popular majorly owing to lack of information about them²⁶.

PROBLEMS AND PLAUSIBLE REMEDIES

As stated previously, the problems surrounding the procedure of transplantation can be categorized broadly into the two phases - donation and allocation. The first phase i.e. donation is where the most controversies take place. The enormous demand and limited supply of organs opens door for exploitation of the economically weaker sections of the society. There have been cases where the organs were removed from the bodies of economically weak people in the veil of providing them with the free health care assistance. This is not new to the practice and there is an immediate requirement to curb it. Since it is an illegal practice and mostly operates under the table, a lot of cases and rackets go unnoticed and unreported. Doctors in our country are given the position of god as they cure and save people from the ailments however, the rampant growth

²⁴Business Standard, Lack awareness a major hurdle in organ transplants, August 5, 2013, available at http://www.business-standard.com/article/current-affairs/lack-awareness-a-major-hurdle-in-organ-transplants-113080500928_1.html(Last visited on June 22, 2015).

²⁵ New Indian Express, Myths, Lack of Awareness on Organ Donation Failing the Ill, published on December 7, 2015, available at http://www.newindianexpress.com/states/andhra_pradesh/Myths-Lack-of-Awareness-on-Organ-Donation-Failing-the-Ill/2015/12/07/article3165216.ece (Last visited on June 22, 2016).

²⁶US National Library of Medicine, Perceptions and Attitudes Towards Organ Donation Among People Seeking Healthcare in Tertiary Care Centres of Coastal South India, May-Aug 2013, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3775029/>(Last visited on June 22, 2016).

in illegal trading of organs by the doctors shows the degrading nature of the same. It is now difficult to trust the person who once was a god for many. This is partly because the punishment prescribed is not adequate with regard to the gruesome act that is committed. The punishment for whosoever is found trading in organs should be more strict in order to ensure that people will think at least twice before indulging into such illegal and inhumane activities. Moreover, stringent rules should be made with regards to the work of the Authorization Committee and Appropriate Authority and it should be ensured by the Ministry that the people who are entrusted with the duty are discharging them with full probity. Transparency with respect to each stage should be ensured where the information related to the donors is made available to the public domain. Following these procedures will ensure that the unrelated donors are not coerced into this illegal practice and are genuinely donating the organ out of love and affection. The lack of awareness in case of cadaver organ donation is one of the major reasons for shortage in supply of the organs. Even if the concept of cadaver organ donation is known to the people, the influence of customs and beliefs is such that people restrain from donating the organs to ensure peaceful and smooth cremation after which the soul of the dead attains salvation. Awareness with respect to cadaver donation should be raised in order to make people look beyond the veil of customs and beliefs.

The second phase i.e. the allocation of the donated organs is the part where the rest of the controversies take place. Since the process of transplantation is capable of saving the lives of many, this valuable medical procedure should reach every individual equally. The equal access theory should be encouraged where the allocation of donated organs should be free of biases based on sex, caste, creed, colour, race, income level, political influence or for that matter the distance from the organ. However, individual worthiness is a parameter based on which allocation of organs is done. The main reason for individual worthiness being not an efficient parameter is the argument that the worth of an individual does not determine the medical needs i.e. some people cannot be more equal than the others. Also, it gives rise to the debate as to who is a competent authority to determine who is worthy or who is not worthy to receive an organ. Practically, under the table transactions take place which essentially means that the economically and politically powerful people are more worthy than the others. In order to curb this and for the sake of equitable distribution of opportunity, the procedure should be made transparent. All the factors including the rank in waiting list, matching of the biological factors, age of the patient et cetera should be kept in mind before allocating an organ to the recipient. The urgency should not be concentrated only in the hands of powerful and influential recipients.

It is also argued that the people who voluntarily choose to adopt a lifestyle which impedes the functionality of the organ thus, making their own bodies more prone to the damage, such people should not be given preference over the people who have faced the damage of the organ in the natural course of neutral lifestyle²⁷. However, this will not be a just proposition as life of everyone is equal irrespective of the habits they possess.

The lack of a centralized system in India to assist the medical institutions and donors is one of the main reasons which prevents the growth of the organ sharing culture. Most of the organs could not reach the right people in the right time as there is no centralized list of potential recipients with the hospitals that are authorized to conduct organ transplantation. This promotes

²⁷E H Kluge, Drawing the ethical line between organ transplantation and lifestyle abuse, CMAJ. 745 (1994).

the unhealthy and unethical practices. Moreover, it leads to the wastage of the donated organs which is a condition that cannot be afforded by the country where there is severe shortage of organs for donation. The Act comes handy in the cases where the donation is being done by a first relative however, it becomes a long journey when an unrelated person tends to donate the organ. The above two factors viz. long procedure and lack of centralized system amalgamate and add to the problem faced in the procedure of transplantation. The procedure of donation by unrelated donors should be strict but time saving in nature and government should legislate upon a centralized data base for the donors all over the country. Also, the definition of organs provided in the act is exhaustive in nature which does not leave room for alteration or addition. Thus, these laws are only applicable on transplantation of a limited organs and not on the part of body like pancreas, skin or liver. Hence, there is no legislation to rule the illegal trading of the same.

ADOPTING BEST PRACTICES FROM OTHER COUNTRIES

As stated in some detail above, Indian legal and medical practices with regards to organ transplantation are not adequate. Worldwide, a lot of countries have adopted better, more suitable policies with regards to organ transplantation. India could adopt several practices from different countries like-

- 1- Spain has the highest deceased donor in the world- 34.4 pmp as recorded in 2009, which means for every million deaths, there were almost 34 individuals whose bodies were put up for transplantation. Portugal is the only other country to have achieved a similar rate of 30 pmp.²⁸

India has over the years, faced lots of problems, with regards to arranging organ donors. Deceased individuals and their families are often reluctant to part with the body of the deceased, mostly for religious and social beliefs. As a result, there is a massive shortfall in the availability of spare body organs for carrying out transplant operations. Thus, India could follow the “Spanish Model” explained as follows²⁹:

- (i) Brain dead donors constitute 95 per cent of the total organs being offered for transplants. The rest are made up of uncontrolled Donation after Cardiac Death (DCD) donors. It is implicit that while most potential deceased organ donors are being cared for in an ICU, it is at the same time that their families are being convinced to donate
- (ii) The main causes of loss of donors were- the lack of identification and referral of possible or potential deceased organ donors. If organ donation was not considered when people died under specific circumstances, potential donors would be missed.
- (iii) Clinicians, were most fundamentally most capable of influencing the process . As they primarily function from the ICU and are able to create a relationship with those working on the unit to promote the idea that organ donation was the best form of end of life care.

²⁸ British Journal of Anaesthesia, International practices of organ donation, C. Rudge, R. Matesanz, F. L. Delmonico and J. Chapman, available at http://bjaoxfordjournals.org/content/108/suppl_1/i48.full?sid=28055f7e-6ad0-45f8-a45a-7c86306dcd03 (Last visited on June 22, 2016).

²⁹ *Ibid* 12.

- 2- Australia too has had a problematic history of arranging organs from deceased individuals. As a result, recently a nine-measure Australian National Reform Agenda was initiated. It includes³⁰-
- (a) A new national approach and system—a national authority and network of organ and tissue donation agencies
 - (b) Specialist hospital staff and systems dedicated to organ donation
 - (c) New funding for hospitals
 - (d) National professional education and awareness
 - (e) Coordinated, ongoing community awareness and education
 - (f) Support for donor families
 - (g) Safe, equitable, and transparent national transplantation process
 - (h) National eye and tissue donation and transplantation network
 - (i) Additional national initiatives, including living donation programmes.

Thus, India too could adopt similar measures and promote a more concrete system of organ donation on a district, state and national basis to create a comprehensive network that promotes organ donation.

- 3- USA as part of National Organ Transplant Act (NOTA) of 1984 created an Organ Procurement and Transplantation Network (OPTN) , which is managed by the private sector. The United Network for Organ Sharing (UNOS) holds the federal contract since 1986 as the OPTN, acting through its 11 regions. The deceased donor organ donation process could be viewed as a continuum from initial identification of the potential organ donor through to organ transplantation. Maximising the supply and quality of the deceased donor organ pool, this continuum lays a lot of emphasis on optimising. Promptly identifying all potential organ donors is critical, and this may be in the emergency department or in the intensive care unit (ICU). 90% of actual deceased organ donors in the USA were donors declared brain dead (DBD donors) and 10% were donors declared dead after permanent cessation of cardiopulmonary function (DCD donors). Centre for Medicare and Medicaid Services (CMS) requires all hospitals to identify and refer all potential organ donors to the local organ procurement organization (OPO). The term ‘imminent death’ is used to refer to “those patients who should be referred to the OPO as one of several performance metrics monitored by CMS”³¹.

India could consider privatizing at least some part of the organ transplantation process to make it more viable and workable. India would be better served that ways, as it will allow greater efficiency in management of the process. Furthermore, as seen above and in the case of Spain, the role of physicians and doctors operating from the ICU is critical and must accordingly be pursued to achieve reasonable results.

- 4- The World Health Assembly (WHA) , in 2004, asked states to take measures “to protect the poorest and vulnerable groups from transplant tourism and the sale of tissues and organs, including attention to the wider problem of international trafficking in human tissues and organs” The WHO, in 2007, estimated that roughly ten per cent of organ

³⁰*Ibid* 13.

³¹*Ibid* 14.

transplant operations worldwide are carried out illegally³². Thus, in order to curb illicit transplants, countries were asked to prepare travel guidelines involving acts of organ donation.

(A) WHEN TRAVEL FOR TRANSPLANTS INVOLVING LIVING DONORS WERE TO BE ALLOWED-

- 1- If recipient had a dual citizenship in the country of residence and also in the destination country and wanted to undergo transplantation from a live donor who was a family member in the destination country of citizenship that was not their residence.
- 2- if the donor and recipient were genetically or emotionally related and wished to undergo donation and transplantation in a country not of their residence to gain access to better health services.

(B) WHEN TRAVEL FOR TRANSPLANTS INVOLVING DECEASED DONORS WERE TO BE ALLOWED- if official regulated bilateral or multilateral organ-sharing programmes existed between or among jurisdictions (countries) that are based on reciprocal organ-sharing programmes between or among the jurisdictions.

The European Commission on Health had published a binding Directive on the Quality and Safety of Human Organs for Transplantation. They provided a manual to deal in detail with the following aspects of transplantation³³ -

- (i) verification of donor identity;
- (ii) verification of the details of the donor's or the donor's family consent;
- (iii) verification of the completion of organ and donor characterization in accordance with specified criteria;
- (iv) the procurement, preservation, packaging, and labeling of organs;
- (v) the transportation of organs;
- (vi) the reporting of serious adverse events and reactions at any stage of the pathway.

Furthermore, the European Commission advisory also states that³⁴ -

'All healthcare personnel involved in the entire process must be suitably qualified, procurement must take place in suitable operating theatres, donor selection and evaluation must be performed under the advice and assistance of a doctor of medicine, medical teams shall endeavour to obtain the required information from relatives of the deceased donor or other persons, and tests for organ and donor characterisation must be carried out by laboratories with suitably qualified personnel and adequate facilities and equipment'.

³²Ibid 15.

³³Ibid 16.

³⁴Ibid 17.

CONCLUSION

The topic of transplantation of organs in India is encompassed with a lot of controversies and needs utmost attention. There is a major demand-supply gap of organ donors in India. This has encouraged organ trafficking and illegal organ donations. Over the years, several major rackets have been busted, which prove that illegal organ trade and transplantation still prevails in the country which needs to be checked immediately. At this hour, the country cannot afford the wastage of organs that have been donated thus, there is an urgent need to install a centralized data base which contains the information of the recipients and the donors across the country. This will catalyse the process of organ transplantation by saving time and wastage of organs. Authorisation committees constituted under the Transplantation of Human Organs Act, have to be made more efficient, accountable and transparent. There is a need to ensure that they compile and disseminate data effectively and efficiently. Also, the punishment for committing the inhumane acts of illegal trafficking of organs should be increased.

Sub-clause (3), Clause 9, of Chapter II of the Transplantation of Human Organs Act, that allows organ donation from non-related individuals, for “emotional” reasons, has been severely misused. It has to be noted that in many cases, such donation of organs has taken place via exchange of money- which is an illegal act. Thus, there is an urgent need to legalise it akin to what was done in Singapore. The definition of organ in the Transplantation of Human Organs Act is not “exhaustive” and does not cater to the needs of the act in the present times. There is a need to amend it and allow a more complete definition to include organs which could re-grow over a period of time and not immediately like- skin, pancreas and liver.

The awareness rate of organ transplantation in India is pretty low. There is a need to educate people towards other types of donation other than just eye donation and deal with religious superstitions that makes even the educated class unwilling to donate their bodies. Indian legal and medical practices with regards to organ transplantation are not adequate. Worldwide, a lot of countries have adopted better, more suitable policies with regards to organ transplantation. India could adopt several practices like the “Spanish model” of organ donation, the privatisation of at least some aspects of organ transplantation process as done in the USA etc.

In a nutshell, the legislation needs to be amended to a certain extent and the implementation of the existing laws should take place in a diligent manner. Moreover, the most important work to be done is to create awareness amongst the medical practitioners as well as the general multitude about the procedure of organ donation and transplantation.

REFERENCES-

- 1- British Journal of Anaesthesia, International practices of organ donation, C. Rudge, R. Matesanz, F. L. Delmonico and J. Chapman.
- 2- Business Standard, Lack awareness a major hurdle in organ transplants, August 5, 2013
- 3- Center for Bioethics, *Ethics of Organ Transplantation*
- 4- Live Mint, *Why organ trafficking thrives in India*, May 28 2015
- 5- New Indian Express, Myths, Lack of Awareness on Organ Donation Failing the Ill, published on December 7, 2015.
- 6- Organ India, Laws and rules governing organ transplantation in India
- 7- Sunil Shroff, *Legal and Ethical aspects of Organ donation and Transplantation*, Indian J Urol. 348 (2009)
- 8- The Hindu, Lack of awareness hampers organ donations in India, December 30, 2012
- 9- The Practical Lawyer (supremecourtcases.com), *How to stop organ trafficking? A Critique of the Transplantation of Human Organs Act in India*
- 10- The Transplantation of Human Organs Act, 1994.
- 11- The Tribune, *Indian Kidney- Global Trade*, February 9, 2008
- 12- The Wall Street Journal, *Obstacles to Organ Donation in India*, September 13, 2012
- 13- US National Library of Medicine, Perceptions and Attitudes Towards Organ Donation Among People Seeking Healthcare in Tertiary Care Centres of Coastal South India, May-Aug 2013 .