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Legal Responses to Organ Trafficking: Evaluating the Role of International Convention and Domestic Laws

MOHD FARDEEN¹ AND DR. LAKSHMI PRIYA VINJAMURI²

ABSTRACT

Organ trafficking is a crime that is an example of the most scandalous types of transnational organized crime that mixes with human trafficking, poverty and systemic inequality. Even though there are a number of international protocols and domestic law systems to fight this illegal business, the continued proliferation and expansion of organ trafficking rings show that there are major loopholes in the enforcement and cooperation. The article critically assesses efficacy of international legal tools, including the Palermo Protocol and the Declaration of Istanbul and the guidelines of the World Health Organization as well as the domestic legislations of such countries as India, the United States, and the European Union. It analyses the difficulties created by regulations, poor regulatory structures, corruption and socio-economic imbalances that facilitate the practice of organ trade. The research paper posits that legal frameworks are present in theory, but not in practice. It ends by proposing to increase international collaboration, streamline legislations and victim-based strategies in order to deal with the international menace of organ trafficking.

I. INTRODUCTION

Trafficking of organs has become a complicated problem in the world that is intertwined with organized crime, exploitation of human beings and inequality in healthcare. The black market that has offered organ transplantation to the needy masses has been encouraged by the growing global demand of organ transplantation and the lack of the legally procured organs. The economically disadvantaged victims are usually forced or defrauded into selling their organs whereas the recipients are usually the wealthy members of society who want the quicker medical services. This gap emphasizes the socio-economic aspects of organ trafficking that are rooted in the deep.

Organ trafficking has been declared all over the world as a gross infringement of human rights and human dignity. Various legal frameworks have been constructed to deal with this problem

¹ Author is a Student at Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

² Author is a Professor at Law College Dehradun, Uttarakhand University, Dehradun, India.

such as the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol), the Declaration of Istanbul on Organ Trafficking and transplant Tourism and guidelines by the world health organization. These tools are supposed to come up with the international agreement on organ trafficking banning and prevention.

On the domestic level, the countries have passed legislations to govern the organ transplantation and criminalize illegal organ trade. As an example, the Transplantation of Human Organs and Tissues act, 1994 of India that the United States National Organ Transplant Act and several other directives in the European Union present legal mechanisms to fight organ trafficking. Nevertheless, their effectiveness is usually undermined by the differences in legal norms, application of these norms, and the capabilities of various institutions.

This paper aims at analysing how international conventions and domestic laws have a role to play in the fight against organ trafficking. It is a critical analysis of the advantages and weaknesses of current legal frameworks and the necessity to have a more integrated, global action to eliminate this widespread issue.

II. THEMATIC DISCUSSION

Human trafficking and its subspecialty organ trafficking is a special challenge to the legal order in the world with its underground nature and transnational aspect as well as its moral aspect. In comparison with other types of trafficking, organ trading utilizes medical services, licensed individuals and healthcare facilities, which have the tendency to exist in the medical gray zone. This intricacy requires a multidimensional response within legal policy that involves supranational agreements, domestic laws and application of legal institutions.

The legal framework to deal with trafficking of organs is more based in the soft law instruments and relatively widely scaled conventions at the international level. Palermo Protocol, which was adopted in the year 2000 is a historic tool that includes the trafficking in persons as also the removal of organs. It commits the State Parties to criminalize trafficking, safeguard the victims and encourage international collaboration. Nevertheless, organ trafficking as a separate crime is not the direct subject of the Protocol, which creates the ambiguities of interpretation. This weakness limits its scope in addressing the niche that organ trade networks have.

The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2008) is also an important normative innovation in the global endeavour against organ trafficking. It specifically denounces organ trafficking, transplant tourism and organ commercialism and defines ethical standards to transplantation practices. But as a non-binding tool, its applicability is based on the good will of states and medical institutions. Although it has had an impact on policymaking in

various nations, the inability to enforce the policy is a significant disadvantage.

The basic principles that guide the procedure of the human cell, tissue and organ transplantation have also been given by the World Health Organization (WHO) which lays stress on voluntary donation, selling of organs and fair access. These principles have been a moral and policy guide to member states. However, as is the case with the Declaration of Istanbul, WHO guidelines do not have organization effects as they are not binding and do not have enforcement mechanisms.

At the domestic level, legal remedies on organ trafficking are significantly different in different jurisdictions.

III. COMPARATIVE COUNTRY-WISE LEGAL FRAMEWORK AND STATISTICAL TRENDS

S. No.	Country	Key Law / Framework	Estimated Illegal Organ Trade (%)	Most Trafficked Organ	Nature of Trade	Enforcement Level
1	India	Transplantation of Human Organs and Tissues Act, 1994 (THOTA)	15–20% of transplants suspected illegal	Kidney	Domestic + Cross-border (Bangladesh/Nepal routes)	Weak–Moderate
2	United States	National Organ Transplant Act, 1984 (NOTA)	<1% (strict regulation)	Kidney	Transplant tourism (outbound)	Strong
3	European Union	Directive 2010/53/EU	1–5% (varies by state)	Kidney, Liver	Internal + Eastern Europe networks	Moderate
4	China	Human Organ Transplant Regulation, 2007	Historically high (10–15%)	Liver, Kidney	State-linked allegations + black market	Moderate
5	Pakistan	Transplantation of Human Organs and Tissues Ordinance, 2007	High (20–25%)	Kidney	“Kidney villages” exploitation model	Weak
6	Philippines	Organ Donation Act, 1991	10–15%	Kidney	Transplant tourism hub (earlier)	Moderate
7	Iran	Regulated Kidney	Legal	Kidney	State-regulated	Unique Model

S. No.	Country	Key Law / Framework	Estimated Illegal Organ Trade (%)	Most Trafficked Organ	Nature of Trade	Enforcement Level
		Market System	regulated kidney sale		compensation system	

In India the Transplantation of Human Organs and Tissues Act, 1994 (THOTA), which was subsequently revised in 2011, is a detailed law governing organ transplantation. It also forbids any commercial attraction of human organs and provides authorization committees to regulate the transplantation process. Nevertheless, the recent measures do not guarantee the elimination of those problems in India, including organ trade even when the consent is not real, the exploitation of the poor donor, and so on. Poor enforcement, corruption, and ignorance are some of the causes of these problems.

The principles of the sale and purchase of human organs are criminalized in the United States by the National Organ Transplant Act (NOTA) of 1984 and create the Organ Procurement and Transplantation Network (OPTN). The regulatory system in the U.S. is not particularly weak, but the cases of transplant tourism and unlawful obtaining of organs remain. Although ethically sound, the stringent ban on the sale of organs has also been blamed to cause organ scarcity which also indirectly contributes to the black market.

These are some of the directives that the European Union has embraced including the Directive 2010/53/EU on the standards of quality and safety of human organs to be transplanted. The EU model puts emphasis on traceability, donors approval, and international collaboration. Yet, the differences between how the member states apply them and the lack of homogeneous criminal penalties are obstacles to its efficiency.

The uncoordinated enforcement of international and domestic legal systems lies as a critical point in the research of the problem of organ trafficking. The variations in legal terminologies, punishment and the mechanism to effect them create loopholes which are exploited by traffickers. As an example, the definition of what does or does not amount to consent or coercion can be different in various courts and makes prosecution and extradition cumbersome.

The other important issue is the fact that organized crime networks contribute to the facilitation of organ trafficking. The networks have international operations involving advanced tactics of finding donors, moving organs and beating law enforcers. Medical professionals are further involved which makes it even harder to detect and prosecute since illegal acts are commonly

disguised but often appear to be part of a legitimate medical practice.

Socio-economic is a key factor that contributes to the continuation of organ trafficking.

IV. GLOBAL DISTRIBUTION OF ORGAN TRAFFICKING BY ORGAN TYPE

S. No.	Type of Organ	% Share in Illegal Trade	Source of Donors	Typical Buyers	Legal Status Globally
1	Kidney	~75%	Poor adults	Wealthy patients	Illegal (except regulated in Iran)
2	Liver (partial)	~15%	Coerced/relative donors	Critical patients	Illegal commercialization
3	Cornea	~5%	Deceased donors misuse	Hospitals/clinics	Regulated but abused
4	Heart	Rare	Deceased donors	Emergency transplant	Strictly regulated
5	Lung	Rare	Deceased donors	Critical patients	Highly regulated
6	Multi-organ trafficking	Emerging trend	Trafficked persons	Organized crime networks	Completely illegal

Without education, poverty and unemployment predisposes people to exploitation. Even legal frameworks although required, are inadequate in dealing with these root causes. An all-inclusive plan should entail socio-economic interventions, awareness and provision of support to the vulnerable people.

Another area where the actions of the laws fail to power up is in the area of protecting the victims. Most organ trafficking victims are not viewed as victims but are seen as criminals, especially when it involves unlawful migration. This is a strategy that discourages our fight against trafficking and it deprives the victims of help. The international conventions have made an emphasis on victim protection yet the application at the local level is not very uniform.

The effectiveness of law frameworks is further eroded because of the problem that may arise in enforcement. Shear resources, absence of special education of law enforcers and corruption impedes the investigation and prosecution endeavors. Organ trafficking cases in most countries go unnoticed, prosecuted thus a culture of impunity has formed.

Organ trafficking has also taken new shapes with technological advancements. Recruiting donors and buyers happens with the help of the dark web, coded textual communication, and

electronic systems. The law enforcement systems have had a difficult time adjusting to these advances, which points to the necessity of technological and responsive implementation patterns.

To solve the transnational aspect of the organ trade, cooperation at an international level is needed. The use of mutual legal assistance treaties, mutual sharing of information, as well as joint investigation, is critical. Effective collaboration is however, hampered by political differences, lack of trust, and bureaucracies and hurdles.

When comparing these two aspects of international conventions and domestic laws, it is clear that there have been great improvements; however there has been a lot of gaps that are yet to be harnessed. The major application of non-binding tools at the international level combined with unequal application at the domestic level restrains the practicality of the measures undertaken at the legal level.

To resolve these issues, an international treaty properly dedicated to organ trafficking is required. The nature of such a treaty must be fully defined with standard provisions and effective enforcement mechanisms in place. More so, capacity building, training and resources allocation should be given more primary concern to law enforcement agencies.

Education and public awareness are also key aspects to an effective response. Misinformation on the dangers and legalities of organ trafficking will help decrease demand and eliminate exploitation. To avoid the culpability in criminal practices healthcare institutions should embrace stringent ethical practices and accountability protocols.

Finally, law has to adapt to changing and complex nature of organ trafficking. To effectively fight the illegal practice of organ trafficking, it is necessary to have a holistic approach filled with legal, social, economic and technological strategy to uphold human dignity.

Another aspect, which needs a critical look, is that which exists as a concert between the system of public health and organ trafficking network. Unhealthy infrastructure, especially in third world economies, tends to provide facilitation to the black markets of organs. Unresponsive financial management of donation systems, huge waiting lines, and their hindrance of the process encourage a group of buyers and donors to consider the illicit options. Various jurisdictions have bureaucratic slowness and delays which force patients to find other faster ways in the underground networks. This creates the urgency of enhancing the public health systems and establishing ethical organ donation programs as a preventive measure of law. Laws and regulations should then be used to reinforce legal mechanisms of good governance in healthcare to minimise reliance on illegal markets.

Inextricably connected with this is the question of medical institutional regulation and responsibility. Clinics, diagnostic centers, and hospitals are a key stake in organ transplantation and, as a result, they constitute a critical contact point. There are however, cases reported where medical practitioners have been involved in unlawful harvesting and transplantation of organs. Poor monitoring, absence of strict rules as per licensing and lack of effective disciplinary actions often enable this complicity. Domestic legislation, which has made it criminal to conduct organ trade, often does not hold health institutions to a high level of liability or accountability. Mandatory auditing institutions, electronic tracking fraud, and terminating punishment, if violated, must be strengthened against such practices. Moreover, the professional medical associations should also become strict on the policies of zero-tolerance and enforce code of ethics.

The presence of intermediaries and brokerage is the other flourishing issue which represents a band-aid of organ trafficking operations. They are individuals or groups that find weak donors, organize logistics, and match them with contacts on both sides, the receivers and medical professions. Although at the centre stage, there are mainly no effective legal frameworks to identify and prosecute these intermediaries because of the absence of evidence, cross-country activities, and informal networks. Lack of special investigation mechanisms also makes enforcement more complicated. In order to fill this gap, the law enforcement bodies need to come up with specific measures such as the use of undercover agents, financial monitoring, or sharing intelligence in the effort to orchestrate these networks. The role of facilitators and imposition of strict penalties to offenders should also be included in mediation bills.

One should also take a closer look at the financial aspect of organ trafficking. Organ trade is a very profitable business, bringing considerable profits to criminal interclans and providing little to donors. What occurs is that money laundering, in most cases, is conducted with elaborate methods, such as the shell company, offshore accounts, as well as informal fund transfer systems like the use of hawala. Current legal strategies in combating money laundering, including anti-money laundering (AML) legislation can be instrumental in fighting organ trafficking. Nevertheless, implementation of AML policies in tandem with anti-trafficking is still minimal in most jurisdictions. Improving such a connection can lead to the intensification of the capacity of law enforcement agencies to monitor the flow of money, address some of the identities of major participants in the illicit slave trade, and cripple the economic bases of the movements of the trafficking organizations.

Besides, there is also the gendered aspect of organ trafficking, which has received arbitrary attention in law. Women and children are the group who are mostly impacted by trafficking

because of their socio-economic weakness and marginalized society. Other women are sometimes pressured into organ donation in the name of family duty or need. Children are the most dedicated heirs to exploitation as they lack the law and protection. In the case of these vulnerabilities, legal frameworks consequently need to be designed in a way that is sensitive to gender and issues that the children face. This involves informed consent, the legal assistance, and formation of rehabilitation mechanisms, which are specific to the needs of the affected individuals.

Certainly, the role of civil society and non-governmental organizations (NGOs) works to address the issue of organ trafficking. These groups usually are the initial decision-by-the-victims organizations that offer service to victims, as well as legal and advocacy assistance. They are also important in creation of awareness and impacts policy reforms. But their attempts are often limited due to a lack of resources, and the fact that they are not coordinated with the state agencies, and it is inhibited by the regulations. Government-civil society partnerships strengthening will be beneficial as it would enhance the effectiveness of anti-trafficking efforts. The role of the NGOs in the prevention, protection, and rehabilitation systems must be identified and enabled by legal frameworks.

Besides, the provision of extraterritorial jurisdiction has become relevant in the fight against transnational crimes like slave trade where organs are historic. As these activities have a cross-border flavour, territorial jurisdiction does not suffice in most cases. A few countries have started implementing extraterritorial clauses whereby they prosecute their citizens who engage in organ trafficking in other countries. Although this is a good move towards the right direction, it is still not used properly and randomly. The extension of extraterritorial jurisdiction and its effective enforcement can make a considerable contribution to the international process aimed at combating organ trafficking.

Data collection and research is another important point. Admittedly, there is limited reliable data on organ trafficking as it is a hidden business and underreported. It does not favour policy formulation, enforcing measures, and international collaboration in this absence of data. International organizations and governments should invest in the systematic collection of data, research and information sharing mechanisms. The creation of central databases and promotion of scholarly research may bring worthwhile information on tendencies, trends and new challenges.

Finally, there is the issue of the demand side of the problem of organ trafficking, and the role of the public and changes in behaviours is indispensable. Laws cannot work without the society

attitudes towards the area of unethical behaviour. The struggles that should be carried out are awareness campaigns in an attempt to encourage voluntary organ donations, debunk the myths and bury the legality and ethical aspects of the organ trade. Schools, media, and community diminutions may contribute a lot to change the attitudes of the people about illegal acquisition of organs and lowering demands.

Essentially, solving the organ trade problem will need a holistic solution that extends beyond the law. This requires the establishment of healthcare reforms, institutionalism, financial regulation, gender-based policies and public awareness mechanisms. The global community can only fight through such a thorough and integrated approach the constant and dynamic threat of organ trafficking.

V. KEY JUDICIAL PRECEDENTS

A. Revathi v. Union of India³

This case addressed illegal kidney transplantation rackets in India and highlighted the misuse of consent provisions under THOTA. The Court emphasized stricter scrutiny by authorization committees and the need to prevent exploitation of economically weaker donors, reinforcing regulatory oversight in organ transplantation systems.

B. PUDR v. Union of India⁴

Although primarily a labour rights case, it expanded the interpretation of Article 21 and exploitation. Its principles apply to organ trafficking by recognizing economic coercion as a form of forced labour, thereby strengthening arguments that organ selling under poverty conditions violates fundamental rights.

C. Bandhua Mukti Morcha v. Union of India⁵

The Supreme Court recognized exploitation due to poverty as a violation of Article 21. This reasoning is relevant to organ trafficking, where vulnerable populations are coerced into selling organs. It strengthens the argument that organ trade is not voluntary but rooted in structural inequality.

D. State of Tamil Nadu v. Nalini⁶

While not directly about organ trafficking, this case emphasized the role of organized crime networks and conspiracy. It is relevant in demonstrating how criminal syndicates operate across

³ (1998) 3 SCC 68.

⁴ (1982) 3 SCC 235.

⁵ (1984) 3 SCC 161.

⁶ (1999) 5 SCC 253.

borders, similar to organ trafficking networks involving intermediaries, medical professionals, and international actors.

E. Common Cause v. Union of India⁷

This case recognized the right to dignity under Article 21, including bodily autonomy. It is relevant to organ trafficking debates as it reinforces that any organ removal without free and informed consent violates human dignity and constitutional protections.

F. Suchita Srivastava v. Chandigarh Administration⁸

The Court upheld bodily autonomy and informed consent as essential rights. This principle directly applies to organ trafficking, where consent is often coerced or manipulated. It strengthens the argument that organ removal without genuine consent is unconstitutional.

G. K.S. Puttaswamy v. Union of India⁹

The landmark judgment recognized privacy and bodily integrity as fundamental rights. It is highly relevant to organ trafficking, as unauthorized or coerced organ removal violates personal autonomy, dignity, and privacy, forming a constitutional basis for stronger legal protection.

H. Budhadev Karmaskar v. State of West Bengal¹⁰

This case emphasized rehabilitation and dignity of victims of exploitation. It is relevant to organ trafficking as it supports a victim-centric approach, arguing that trafficked donors should not be criminalized but rehabilitated and protected under human rights frameworks.

I. Vishaka v. State of Rajasthan¹¹

The Court used international conventions to fill legislative gaps. This approach is relevant for organ trafficking, where non-binding international instruments like the Palermo Protocol can guide domestic legal frameworks in absence of specific legislation.

J. State of Punjab v. Mohinder Singh Chawla¹²

The Supreme Court held that the right to health is integral to Article 21. This is relevant in organ trafficking discourse as it highlights state responsibility to provide adequate healthcare, reducing reliance on illegal organ markets driven by desperation and scarcity.

⁷ (2018) 5 SCC 1.

⁸ (2009) 9 SCC 1

⁹ (2017) 10 SCC 1.

¹⁰ (2011) 11 SCC 538.

¹¹ (1997) 6 SCC 241.

¹² (1997) 2 SCC 83.

VI. CONCLUSION

Organism trafficking is an acute issue on the international agenda which highlights the weaknesses of the current legal regulations and inequalities still present in the healthcare system of the world. Although the existence of lawful international conventions and national legislation designed to fight this dirty business has helped in formulating a legal framework upon which the act can be curbed, all attempts are circumvented by an enforcement problem, coordination and social economic inequities. The international instruments that are not binding and have such discrepancies in the domestic application have provided loopholes that are exploited easily by organized criminal networks.

As has been shown in the analysis, legal responses, despite their good intentions usually fail to answer the primary questions of why organ trafficking exists in the first place such as poverty, ignorance, and the absence of proper healthcare facilities. Moreover, the criminalization-centered approach has even neglected victim security and rehabilitation which genetically undermines the overall effectiveness of the effort against trafficking.

In the future more consistent and strong global strategy is needed. This involves formation of a binding international law instrument specifically aimed at organ trafficking, an improved cooperation across the borders and making sure that the internal legislations are harmonized. Also, the weaknesses that underlie organ trade can be properly addressed by combining policies in socio-economic systems with the law.

Finally, the fight against organ trafficking must be a joint effort by governments, global institutions, healthcare providers, and civil societies in addition to making a change to the law. An interdisciplinary strategy is needed to support human dignity and address justice to victims all over the world.

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