

HUMAN ORGAN TRAFFICKING AND TRANSPLANTATION: A LEGAL ANALYSIS OF CAUSES, CHALLENGES AND IMPLEMENTATION OF EXISTING LAWS IN PAKISTAN

Rao Qasim Idrees*

Assistant Professor/Head, School of Law, University of Gujrat, Pakistan
qasim.rao@uog.edu.pk

Muhammad Imran

Assistant Professor, College of Law, Government College University Faisalabad, Pakistan
adv.drmmimran@gcuf.edu.pk

Saba Manzoor

Advocate High Court, Lahore High Court Bar Association Lahore, Pakistan
sabavirk@hotmail.com

ABSTRACT

Organ transplant save many lives every year throughout the world. But at the same time lives of donors are in danger because of illegal organ trade which is common in third world countries. People from all over the world especially from developed countries including Europe, Australia, and United States come to developing countries including Pakistan, India, and other developing countries every year. They used to hunt poor donors who are all set to sell off their healthy organs in return of money. Recent report of World Health Organization (WHO) says that annually almost ten percent kidney transplants of the overall kidney transplants that happen in the world involve donors from the above mentioned developing countries. Current research is based on laws which can overcome this alarming situation and also highlights the issues regarding implementation of existing laws and policies. Transplant of Human Organ and Tissue Act 2010 is a relevant law which provides removal, storage and transplantation for therapeutic purposes. This research is of qualitative and exploratory nature. It is such as to find out the most relevant information for the topic and made evaluation using tools to take out research through articles, books, case studies and online materials. This research critically evaluates the laws which are related to organ trade in Pakistan. Primary source of research is relevant laws and their critical evaluation and secondary source of this research is journals and articles of relevant topic. This research concludes that Organ trafficking is one of the most common illegal activities in the world and particularly in Pakistan. In the last few decades, there have been a number of transnational issues. The most highlighted causes are poverty, exploitation of minors, and lack of viable organs. However, the root cause for the current scenario is the lack of proper legislation regarding illegal organ trade and the implementation of existing laws. The government and other public/private organizations shall observe the relationship between donors, donor health and organ trafficking in order to develop efficient policies against organ trafficking and transplantation tourism (Nazihah Syed Ali, 2017).

Keywords: Human Organ Trafficking; Legal Challenges; Transplant Tourism; THOTA Act

INTRODUCTION

Organ trafficking is also known as illicit organ smuggling. It is the practice in which humans trafficked for the purpose of organ extraction, and is still a bleak fact in the twenty-first century. Under-reporting and inaccurate estimates are the result of complex concepts and the many sided undercover survival of organ trafficking market. The fact that the donor typically requires no post-operative treatment is a typical characteristic of the commercial organ trade which may have significant implications.

* Corresponding Author

Another disturbing fact of this ruthless and unprincipled industry is that only a small portion of the money paid by the receiver goes to the donor. It entails medical malpractice and unethical actions on the part of physicians and clinics where these transplant operations are performed. Hospitals in Pakistan have been documented to receive on standard US\$40,000 to organ recipients, while a donor earns almost 2 percent of it. The difference between organ trade and organ trafficking can be seen straightforward by using the criteria of permission and compulsion, but for sufferers of organ trafficking, the line between permission and oppression may be vague particularly when medical staff refuse to warn live donors about the dangers or long-term effects of selling an organ (Zeeshan Haider, 2017).

Determining whether an organ donation or sale entails the misuse of a donor's state of weakness is a difficult challenge. It is hard to show that "submitting to an abuser's will was the only true or appropriate choice open to a survivor". Brokers, surgeons, and other members of the trafficking chain are not the only ones who exploit the victims but extreme economic and social violence sometimes makes selling an organ the only choice for the victims. Attempts to describe slavery relied on human or labor trafficking definitions.

People who sell an organ that is already being removed from its "donor" are more likely to disclaim any involvement in recruitment or intimidation. The claimants will have to indict the entire trafficking mechanism through which they made their "choices" in order to convince officials that organ "donation" is the only alternative available to them. The world's current dilemma is how to make organ transplants legal and ethical so that people in need of transplants will access them without manipulation of vulnerable populations.

Donations of genetically unrelated organs in developed countries are exclusively limited to blood donors who have a close and emotional relationship with the recipients. The constitution prohibits commercial organ transplantation. The situation is alarmingly different in a country like Pakistan. It is one of the most popular destinations for "transplant tourism" in the world. Pakistan receives up to fifteen hundred transplant visitors per year, second only to China according to WHO estimates. There is no law in Pakistan banning the sale of human organs until recently (Haberal, M, 2019).

The Highest Court of Pakistan, the country's highest judicial body given a ruling in late July 2007 ordering the government to enact laws governing Pakistan's illegal organ trade particularly the trade in kidneys (Zeeshan Haider, 2017). This decision was made in response to widespread concerns that needy people were being forced to sell their organs to brokers for distressing money compensation. In July, media reports claimed that at least ten hospitals in Lahore, Pakistan's largest city were engaged in the illegal sale of human organs. The Government of Pakistan adopted the "Transplantation of Human Organs and Tissues Bill 2007" in response to the Supreme Court's ruling. The bill introduces a series of initiatives including limiting organ donation to near blood relatives over the age of eighteen and excluding contributions from others that are not related to the beneficiaries (Rizvi SA et al. 2020).

Organ trade became illegal in Pakistan after the Transplantation of Human Organs and Tissue Ordinance was passed in 2007. Despite a concerted effort by a strong pro-organ trade group to derail the Ordinance until it became law, anti-organ campaigners prevailed and the National Assembly and Senate passed the Transplantation of Human Organs and Tissues Act in 2010. Transplants performed naturally rather than under duress are given more weight by the law. It says that if a donor is not found in the patient's family, a non-close living blood relative who is eligible to donate his organ will be considered if the committee is satisfied that there is no financial consideration.

Causes and Legal Challenges of Organ Trafficking in Pakistan

In Pakistan, the prevalence of kidney disease is estimated to be about one hundred per million people. Kidney transplantation began in the area on a daily basis in the 1980s from blood relative donors. Despite this, the lack of dead donor and a growing organ shortage resulted in unrelated commercial transplants accounting for 70% of all transplants in private sector hospitals. However, in the last decade, unrelated economic operations have surpassed ethical living-related transplants by a factor of ten. Pakistan has also been one of the most successful transplant tourism destinations in recent years. The history of this operation, which began in the 1990s, is based on three factors: first, the shifting situation in the subcontinent, which is primarily due to India's prohibition on kidney exports, second,

the lack of anti-trade transplant legislation, and third, the presence of a very well living donor transplant program in the country (Human Rights and Trafficking in Persons).

Illicit organ trafficking is becoming more common as the gap between the availability of vital organs for transplantation in the developing world and the market for those organs widens. This illegal activity often exploits the poor, marginalized, and vulnerable communities of developing countries, such as Pakistan.

Furthermore, poverty is the main cause of organ trafficking. People who are unable to cover their regular expenses tend to sell their organs and become victims of organ smugglers. Some donors wish to sell their organs to marry their daughter or to build a home. Whatever the cause, the only problem is that they are able to sell their organs for a low price in order to complete their desired mission. Sadly, they are unaware of the real price of an organ and sell their organs for a low price.

Organ transplant is legal if it is done with the consent of party but if it is done by fraud or by using force or criminal procedure it becomes illegal. Transplant tourism becomes an industry from the time when organs are traded internationally. People are in need buy organs from developing countries like Pakistan sometimes they use illegal means to fulfill their need. In some countries trade of organ is illegal and in some countries, it becomes business. In countries where trade is illegal people use to transfer their kidneys or other organs by using illegal means and there are special networks which are working behind this crime, they sometimes force donors to sell their organs and then they transfer them to other countries. Despite the fact that organ transplantation has extended and changed the lives of many people around the world, there is a severe lack of organs, which is one of the major causes of organ theft and transplant tourism worldwide (Policing the Globe, 2006).

Human trafficking is defined as cross-border travel in Pakistan's Prevention and Regulation of Human Trafficking Ordinance (2002), an anti-trafficking law. Despite the fact that the vast majority of trafficked individuals in the area are considered to be victims of trafficking within the country, current rules and regulations do not identify or treat them as such. There is currently no consistent framework in place to protect and track millions of internally displaced people from human trafficking. Such legislative contradictions not only cause many trafficked victims to disappear but also adding to inaccurate trafficking statistics, however, they also make them more vulnerable to abuse. Moreover, all universal human rights covenants and debates on human welfare are at odds with this invisibility and ignorance. As a result of the mismatch between strategy and reality on the ground, forced refugees and trafficked people are vulnerable.

In Pakistan, THOTA Act 2007 passed in the year 2007 to control and curb the human organ trafficking. The details are different, as the overall number of transplants in the world is projected to be about 2500 a year before the Ordinance. In these, 1500 were aliens, 500 were unassociated locals and 500 were living transplants. While 431 transplants were completed six months after the ordinance, ethical transplants have resurged in the region. Various ethical centers took the chance to take the lead from Sindh Institute of Urology and Transplantation (SIUT). It rose from three a week before the order to 10 to 12 a week, after the order in 2009 hit 544.

This makes SIUT the world's only centre with the largest live renal donor transplantations in one year. As more than 1000 local transplants (compared to pre-ordination periods) were performed by the end of 2008, transplantation in Pakistan was balanced. According to the Human Organ Transplant Authority, there were 871 transplants (544 (62%) in the SIUT in 2009.

The influential commercial lobby launched a campaign against the law soon after the legislation was enacted that meant it was restricted, and patients died of organ shortages (actually unrelated commercial donors). The National Assembly has taken a dark step to change the ordinance to encourage the non-connected donors to collect compensation and to allow foreigners to undergo transplants (to support the country's economy). These amendments were defeated in January 2009 by a committee of the National Assembly and made into a statute and into part of Pakistan's constitution. The loss did not disturb the company lobby and the Shariat Court relocated (Aasi, G. H. (2003).

The Federal Shariat Court is an associate bench of the Pakistan Supreme Court, which promises that all laws in Pakistan conform to the laws of Islam. Recently, a petition was sent to the Shariat Court by the Pakistan Association of Transplants Physicians and Surgeons representing those interested with commercial transplants that some clauses of the "Human Organs Transplantation and Tissue Ordinance 2007" are incompatible with Islamic Law. The petitioners argued that the statute

was oppressive and unfair since only immediate relatives of the blood could give. They also argued that the legislation was unfair since Muslims from other countries are forbidden from transplanting.

The assisting federal government was embodied by the human organ donation authority administrator. The government was supported by the Pakistan Transplant Society, the Pakistan Nephrology Society and Pakistan Urological Surgeons Association, as well as members of human rights organizations. As *amicus curiae*, the President of the Pakistan Transplant Society appeared for societies to object to the petitioners. After 8 hearings in three cities in Pakistan, the Shariat Court denied the appeal. The Court has claimed that "sell and buy human organs and transplants to non-legitimate family donors is counter to the spirit of Islamic laws".

Implementation of Transplantation of Human Organs and Tissues Act (Thota) and its Weaknesses

The 2002 Pakistan Human Trafficking Prevention and Control Ordinance describe trafficking in human beings. The lack of regulations on illegal donation and trafficking in organs made the world a global centre for organ transplants and illegal trade in organ trafficking. In response to illicit organ transplantation and the trafficking of vulnerable people for the purpose of organ removal, Pakistan's Supreme Court ordered the regulatory bodies to control organ transplantation (Yousaf, & Purkayastha, 2016). An ordinance has been passed by the government in 2007, which was later in March 2010 refined and called as the Transplantation of Human Organs and Tissues Act 2009 (THOTA).

Pakistan devolved health care to provinces in 2010, and the 18th Constitutional Amendment and provincial Human Organ Donation Regulatory Authorities began to register and oversee institutions that provide organ transplantation shortly after. Although it may seem simple to differentiate organ trading from organ trafficking based on consent or coercion and the line between consent and coercion can be blurry for organ trafficking victims particularly when doctors fail to warn living donors about the dangers or long-term effects of donating an organ. It's impossible to tell whether an organ donation or transaction includes the exploitation of a donor's vulnerable position. "Submitting to an abuser's will was the only genuine or appropriate choice available to a victim," it's difficult to prove. The victims are not only abused by brokers, surgeons, and other members of the trafficking chain but excessive economic and social brutality also forces the victims to sell their organs (Budiani-Saberi, & Delmonico, 2008).

Human or labor trafficking meanings were used to try to classify slavery. People who sell an organ that has already been removed from its "donor" are more likely to disclaim any involvement in recruitment or intimidation. The claimants will have to indict the entire trafficking scheme under which they made their "choices" in order to convince authorities that organ "donation" is the only alternative available to them.

In 2007, Pakistan passed the Transplantation of Human Organs and Tissues Ordinance, which was followed by the Transplantation of Human Organs and Tissues Act 2010. This legislative revolution was the culmination of a triad of influences: local patient establishment solidarity; mainstream media coverage to foster awareness of the exploitative nature of commercialism in this transplant and support from international medical organizations such as the Transplant Society and the WHO. Before this parliamentary business, Pakistan was known for 'transplant tourism,' with foreigners performing two-thirds of kidney transplants in 2000.

THOTA's passage was an important step in the country's fight against illegal organ transplantation and trafficking. Pakistanis are also prohibited from donating organs to overseas recipients under the law. The bill's passage, on the other hand, was not a panacea for the issue. Optimism that the law would prevent illegal transplantation was disturbed when reports surfaced that negligent enforcement would allow the practice to come back. Organ harvesting from vulnerable individuals is a common topic in the news, but it is not considered a form of human trafficking. Over 6000 people from a small village in Punjab's Sargodha district have been displaced in the last year, according to local media reports.

Illicit transplantations that target vulnerable persons have not been eradicated by the legislation, according to media reports and earlier ethnographic studies with victims of organ trafficking in the country. The THOTA prohibits the trade or commercialization of human organs, and anyone found guilty of illegal transplantation, sale, procurement, or consumer dealing with human organs faces a jail sentence of up to ten years and a fine of up to one million rupees. The significant

weaknesses of THOTA may be noted as the rank of suspects for organ removal shall not be discussed. Due to their fright of being arrested as culprits engaged in the organ trafficking, claimants cannot obtain assistance from the justice system. The victims of illicit transplant or trafficking of tissue, such as the other types of trafficking in human beings, can be more exploited by smugglers and government agencies. Furthermore, it does not offer legal or economic aid or recovery. For the long run it remains a daunting struggle to endure this manipulation.

Culprits are well-organized and have political ties or contacts with officials, which makes it possible for them to avoid the law. There are few rules and no mechanism in THOTA to differentiate between voluntary and coerced organ donation. When close blood relatives are unable to donate, THOTA allows non-related donors to do so if the donation is approved by the Review Committee which must ensure that no bribery, fraud, or economic trading has taken place. THOTA requires any medical institution or hospital that performs at least 25 transplants per year to form such appraisal committees. Committees of this kind are also being constituted and notified.

In the absence of a national organ donation registry and organ transplantation waiting lists which is allowed by the system to accept, donate, or implant organs in cases of nonrelated organ transplantation. There is no mechanism in place to track or record the number of THOTA cases that are indicted or sentenced (Yousaf, & Purkayastha, 2016).

The Role of Institutions to Combat Illegal Human Organ Trafficking

Organ trafficking and sex trafficking are recognized as important world issues for organ transplantation. However, these types of trafficking remain generally exempt from international law frameworks as well as domestic criminal law. The traffic in organs or individuals for their organs is not a matter for the ICC, except in exceptional circumstances, for example, where performed in a way consistent with the concepts of crimes against humankind. Despite the fact that the United States Code defines trafficking as "a transnational offence with national ramifications," it is rarely prosecuted in domestic courts. It has thus largely functioned in fact as what could, both geographically and domestically, be judged as a "stateless" crime. However, these kinds of trafficking of organs appear to be common and debilitating for the victims. We analyze when and how international and domestic criminal law systems have increasingly struggled to counter such trafficking.

Regardless of the various global and national attempts at prohibition which outlined in the subsequent sections, the trafficking is reportedly persistent. Due to the benefits that enable it, the challenges in deterring practice are apparent. In the countries where organ is obtained, practitioners, as in the countries themselves, have financial benefits to facilitate discipline. The late moratorium of Pakistan on money-making transplantation and on donations from not related Pakistani donors to foreigners has been (unsuccessfully) questioned by transplant practitioners. The dispute recently dismissed by the Pakistan Federal Shariat Court is that the bans make life saving harder. Yet trafficking retains a commercial draw.

By far the most ethical problem surrounding transplant tourism is the victims of organ procurement. Kidneys, lungs, corneas, and liver lobes may come from living donors. According to the WHO, about 10% of the nearly 63,000 kidney transplants performed annually from living donors are trafficked. Live donors will provide kidney, lung, cornea, and liver lobes. According to the WHO, about 10% of the nearly 63,000 kidneys transplanted each year are trafficked by live donors.

The Federal Investigating Agency (FIA) has been empowered by the Ministry of the Interior to take steps to tackle trafficking in persons. Previously, owing to an absence of legal cover, the Federal Government was reluctant to take action against illegal trafficking in human organs. The Ministry has issued a note, a copy of which is available from The Experience Tribune, to make the transplantation human organ and tissues law 2010 accessible to the FIA Act 1974 vide entry number 33 for further legal action. A recommendation to incorporate 'The Human Organ Transplantation and Tissue Act 2007' as well as the 'Amendment Act 2010' as a timeline for the FIA was recommended by the Sub-committee of the Standing Committee on Interior and Narcotic Safety on March 27. Earlier this year in January, FIA had expressed its reluctance, as it had no statutory authority to, to carry out operations against the unlawful movement of human organs.

The FIA had urged the authorities concerned, in the light of its growing concern regarding sex trafficking, to include the legislation concerned in its timeline in order to make it constitutionally safe from their action against it. The federal government was ordered to include a letter. The federal

government demanded by letter that the Human and Tissue Act 2007 shall be made and that the Act 2010 be amended in the FIA calendar. Directors of Punjab, Sindh, Khyber-Pakhtunkhwa, Baluchistan and Islamabad have been briefed about the FIA Headquarters. FIA has also conducted inquiries into criminal trading in human organs under the orders of Interior Ministry. They prosecute the individuals and their facilitators participating in this abominable activity. In addition to the presentation of its conclusions in support the issue of the clearance to illegal medical colleges, FIA is directed to send a study within 15 days. Only recently a National Assembly Legislative panel had proposed that FIA be empowered by the government to take action against the citizens involved in human organ trafficking (Khan, 2018).

The Government's primary monitoring and monitoring body on trade in human beings remains the Federal Investigation Department. The department concentrated on cross-border offences, while the police usually examined domestic incidents of prostitution. While FIA and provincial police organized the entire cooperation on an ad-hoc basis, the overall activities and data collection remain weak and complex. Through its regional and local task forces, FIA prosecuted cases of trafficking in human beings and migrants trafficking. FIA authorities, including all newly-inducted officers, have been routinely prepare to fight human trafficking, including to distinguish between trafficking and smuggling of migrants. The trainings have been funded by foreign governments and international organizations who have given in-kind assistance to trafficking specialized training for the police, investigators, public prosecutors and officials of the FIA. The FIA had established offices in three international embassies; its Oman branch had been investigating eight cases of sex trafficking. NGOs noted that Provincial police were hesitating; for certain crimes like prostitution, to file FIRs needed for initiating criminal investigations. In comparison lawyers and judges mostly lacking proper preparation and have led to long trafficking hearings and poor levels of prosecution. Bilateral mechanisms for collaboration in law enforcement with other nations, 8 foreign smugglers or smuggling narcotics investigations one child trafficker extradited to the United Kingdom were maintained by the government.

Suggestions and Recommendations

With the help of legal framework people who are in need of organs will follow the right path to fulfill their need. Following are some features through which the authorities can stop organ trade and even minimize demand of transplantation by preventing diseases that contribute to organ failure and it includes (i) Legislation (ii) Organization (iii) Healthcare Systems (iv) Registries and data collection (v) Public health and education (vi) Community.

In the continuation of Pakistan's progress to end organ trading, the importance of each feature, the role of government, experts, and society, and the ethos of equity are all significant. The following are some recommendations.

- The very first step is to enact laws in the area of organ trafficking. Legislative bodies and law-making agencies should play a role in preventing organ trafficking. In contrast to its past international reputation as an international renal bazaar, Pakistan is slowly but steadily moving towards self-sufficiency. Despite the country's enormous political and social problems in recent years, Pakistani transplant practitioners, policymakers, and community members, working together with international support have made significant improvements in the history of organ trade by working on organ transplantation legislation. The Transplantation of Human Tissues and Organs Ordinance was passed in 2007 outlawing the payment of organs permitting dead organ donation and specifying the role of national authorities in controlling transplantation operations. Despite legal challenges from a group of individuals seeking to recover organ trading, the Shariat Court affirmed the Ordinance, and the bill enacting the law was ratified. The criminalization of the organ trade has deterred transplant tourism to Pakistan, despite the fact that the act has not yet been fully implemented.
- Another aspect is to create an organization whose goal is to protect donors and ensure that organ trading and commercial use of organs is prohibited. Following the enactment of the ordinance, the Human Organ and Tissue Authority is created. Its goal is to protect donors and recipients from poor health care, to put a check on hospitals, their staff, and physicians to ensure that organs are not sold for profit and to enhance public healthcare programs and infrastructure in Pakistan.

- It is hoped that by implementing these systems, it will be possible to not only increase the supply of organs and transplantation facilities but also to reduce the need for transplantation by preventing and curing diseases that lead to organ failure. Education regarding organ donation and public health services can be the most successful way to make strides in the fight against organ trafficking. Organ trafficking is not a problem in Pakistan, but there are no laws or services in place to deter it. It is beyond time to create laws and public awareness programs to teach people about the differences between organ exchange and organ transplantation.
- In Pakistan, for example, the Prevention and Control of Human Trafficking Ordinance (2002), a counter-trafficking law, describes human trafficking as cross-border travel. Despite the fact that the vast majority of trafficked individuals in the country are thought to be trafficked within the country and existing laws and regulations do not identify or regard them as victims of trafficking. These legislative disparities not only leave many trafficked victims disappear and contribute to erroneous trafficking figures, but they also make them more vulnerable to repeated abuse with little risk to the offenders.
- Pakistan and other developing countries have only passed anti-organ trading laws in response to international pressure. However, they do not pay particular attention to regulating the trade lawfully. Illicit organ trafficking is difficult to trace, and these countries have a bad track record of making the necessary steps to help their poor people. Sanctions may be used as a means of applying the requisite leverage. When it comes to the efficacy of sanctions, there are many aspects to remember. There must also be a proper regulatory mechanism in order to address illicit organ trafficking which must be executed by sanctions.

CONCLUSION

In fighting human organ trafficking the international community has made substantial progress. A little recognized problem has led to several legislative campaigns initiated by policymakers and foreign organizations with regard to trafficking. Yet these efforts face huge obstacles, including poor basic studies on trafficking of human beings. In fact, comparable success has not been accompanied in investigations into labor or organ trafficking in the studies of human trafficking. The lack of understanding is further compounded by the confusion of the three trafficking forms and the neglect of each of the distinct independent characteristics. Academic research has a lot to add to the analysis and interpretation of these characteristics. Such awareness allows us to respond more effectively to trafficking in human beings and can take closer to removing this human rights threat. Pakistan's organ bazaar, or more accurately, the illicit organ trading market, represents the country's increasing level of corruption as a result of a lack of legislation. Because of the poverty of this developing country, prospective overseas recipients are enticed to buy organs from poor suppliers. Several bills banning the organ trade were suggested as a result of the country's political instability, but they were never passed due to a lack of political support and strong opposition. Apart from the opposition, a number of self-serving and opportunistic medical related businessmen actively lobbied against prevention legislation claiming that transplant tourism was beneficial to the economy.

The dissemination of the Ordinance restricted possibilities for irrelevant donations to special situations provided for by statute while the procurement and distribution of organs were unlawful and punishable offences, which contributed to a full prohibition of all activities of organ donations to foreigners except for accompanying donors. Health practitioners and their institutions in Pakistan must comply with the above-mentioned rules and transplant live donors at minimum physical and emotional risks to gain autonomy for organ transplantation. In many nations, gaining full autonomy in organ transplantation is a distant aim but following this purpose would provide the driving principle for more successful functional methods and ethical policy related to the supply and transplantation of organs. Transplant tourism and organ trafficking are global issues. Organ transplantation must be regulated in developing countries including Pakistan. Both developing and developed countries should test awareness programmes. Governments, health providers, and civil society must all work together to protect both donors and recipients in their respective countries.

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