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The Human Organ Transplant Act in India: An Examination of Laws and Practices

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Abstract

The Transplantation of Human Organs and Tissues Act (THOTA), also known as the Human Organ Transplant Act (HOTA) of 1994, is a significant piece of legislation in India that aims to control the removal, storage, and transplantation of human organs and tissues for therapeutic purposes while outlawing the sale of human organs for profit. This essay offers a thorough analysis of the Act, the changes made to it later, and the real-world effects of putting it into effect throughout India.

Key-words: *Transplantation of Human Organs, Right to health, Brain Death etc.*

Introduction

In Hinduism, the concept of "donation" is immensely significant. Daan is the Sanskrit word for donation. Daan is ranked third among the 10 virtues in Hinduism. Hinduism emphasizes finding the solutions on your own. The Bible gives us direction, but we still need to make our own decisions. Hindu texts contain numerous allusions endorsing the idea of organ donation, although individual Hindus are free to make their own decisions about transplantation and organ donation. Dharma, or moral life, is adhered to by Hindus, and this aligns with the concept of organ donation. Hinduism contains no teachings that forbid organ donation. Any kind of donation is welcomed and thought to be advantageous for the donor's family as well as for themselves¹.

The paper explores the constitutional foundations of THOTA, emphasizing how it is consistent with the Indian Constitution's Article 21 right to life and personal liberty. It looks at the ethical and procedural protections put in place by the Act, including the requirement that donors provide their consent, the strict certification standards for brain death, and the

creation of both federal and state regulatory agencies. The Act seeks to stop the illicit trade in human organs, which frequently involves the exploitation of people from low-income backgrounds. To prevent vulnerable groups from being coerced or exploited in the organ trade, THOA forbids the sale of human organs for profit and imposes harsh penalties for violators.

In order to guarantee that organ donations are voluntary and made with full knowledge of the consequences, the Act places a strong emphasis on informed consent.

The study also discusses the Act's practical difficulties and infractions, such as the problems of organ trafficking, the illegal organ market, and the moral conundrums that face medical professionals. The city of Jaipur is specifically mentioned to highlight the ways in which regional customs and legal frameworks interact with federal laws.

The purpose of this essay is to present a balanced view on the practical application of the Human Organ Transplant Act. In order to guarantee that organ transplantation in India is carried out in a fair, open, and compassionate manner, it also makes recommendations for bolstering the legal framework and improving ethical compliance.

¹ "E-Journal Dadhichi Deha Dan Samiti - Article:AOrgan donation in Hinduism." *Dadhichi Deh Dan Samiti*, dehdan.org/ejournal/novdec2018/ejournal4.html.

History of Human Organ Transplant

The concept of organ donation and transplantation is deeply ingrained in Hindu culture, as evidenced by the numerous examples of these practices found in Hindu tales. Tribal hunter Kannapa was a devout devotee of Lord Shiva. A temple priest once objected to him giving meat to a Siva Linga, which is a representation of Lord Shiva. In order to gauge Kannapa's level of devotion, Lord Siva caused blood to spurt from the Linga's right eye. Kannapa attempted but was unable to treat it with herbs. He proceeded to gouge out his right eye and covered the gushing wound with it. Then the Linga's left eye started to bleed. Lord Shiva stopped Kannapa as he was about to gouge out his left eye. This was the ultimate act of devotion through donation of a part of oneself².

In another tale, Rishi Dadhichi sacrificed himself so that his bones could be used to make Varja, the gods' thunderbolt weapon, for the god King Indra. The gods, known as devas, utilized the varja to battle the demons. According to popular belief, Rishi Dadhichi once said, "It is better that my bones help you attain victory, rather than rot in the ground." A popular tale also exists about King Shibi, who was prepared to give his life to preserve the life of an a Pidgeon that had come to him for shelter.

According to legend, the gods took on the forms of a pidgeon and a hawk in order to test Shibi's compassion and righteousness. The hawk claims that Shibi is denying the pidgeon its proper prey, despite the pidgeon's pleas for Shibi's protection. Subsequently, Shibi gives himself over to the hawk rather than the pidgeon, even at the cost of his own life. Hindu texts emphasize the ideas of selflessness in giving (daan) and compassion (Karuna). Daan appears in the list of the ten Niyamas, or virtuous practices³.

However, the first successful organ transplant in contemporary history was a kidney transplant performed in 1954 at the Peter Brigham Hospital in Boston by David Hume and Joseph Kelly. On December 1, 1971, the first kidney transplant in India took place at the Christian Medical College in Vellore, Tamil Nadu⁴. India started doing kidney transplants in the 1970s, and ever since, it has led the Asian subcontinent in this area. Transplantation rates increased within the first ten years as surgical and immunosuppressive treatments were refined. During this time, unrelated kidney donations from people in low-income families also became common, which paved the way for the commercialization of organ donation. As the ethical situation grew more complicated, national and international populations expressed outrage⁵.

² <https://www.itnnews.co.in/indian-transplant-newsletter/issue22/Religion-and-Organ-Donation-339.htm>

³ Ibid

⁴ [https://haryanahealth.gov.in/organ-transplantation-acts/#:~:text=The%20world's%20first%20successful%20organ,%20%20Vellore%20\(Tamil%20Nadu\).](https://haryanahealth.gov.in/organ-transplantation-acts/#:~:text=The%20world's%20first%20successful%20organ,%20%20Vellore%20(Tamil%20Nadu).)

⁵ Shah, Sunny B., and Bharat Vallabhdas Shah. "Legal aspects of transplantation in India." *Indian Journal of Transplantation* 12.3 (2018): 169-173.

The Indian government responded by passing the Transplantation of Human Organs Act (THO) in 1994, which outlawed unrelated transplants and permitted deceased donor transplants provided brain death was acknowledged. Even with these steps, scandals involving live donations have occurred frequently over the last ten years, underscoring the ongoing difficulties in stopping unethical behavior.⁶

Right to health

The moral and legal implications of organ transplantation are closely related to the right to health, which is a fundamental aspect of human rights. Article 21 of the Indian Constitution, which upholds the rights to life and personal freedom, includes protection for the right to health. The Supreme Court has construed this constitutional guarantee to encompass the right to health as a necessary condition for leading a dignified life.

The right to health emphasizes the necessity of moral behavior and strong legal protections in the context of organ transplantation in order to guard against exploitation and guarantee secure and efficient medical care. It guarantees that people—donors and receivers alike—get proper treatment and are shielded from immoral activities like organ trafficking.

Respecting the values of informed consent, openness, and freedom from compulsion is essential to ensuring everyone's right to health. As seen by well-known incidents such as the organ transplant scam in Jaipur, this paradigm is essential for tackling the moral dilemmas associated with transplantation. The preservation of human dignity and the ethical and legal guidelines established by the right to health are essential for guaranteeing that organ transplant procedures are carried out honorably and with consideration for all parties concerned.

The Transplantation of Human Organs Act

The Indian government enacted The Transplantation of Human Organs Act (THOA) in 1994. Furthermore, the Transplantation of Human Organs Rules, which were recently revised in 2014, expanded the parameters for organ donation and added tissues for transplantation. They were first implemented in 1995. The act allowed for the legalization of brain death in India, making it illegal to sell organs for profit and permitting the donation of deceased people's organs through brain stem death. In India, organ transplantation is governed by the Transplantation of Human Organs Act (THO) and its ensuing revisions. According to the Act, those who are close relatives—parents, siblings, children, and spouses—are eligible to donate organs without having to follow any legal requirements. Grandparents have also been included in recent modifications.

In cases where no close relatives are available, special permission must be obtained from a government-appointed authorization committee.

Additionally, the Act defines brain death and stipulates that two medical certifications, including one from a

⁶ Shroff, Sunil. "Legal and ethical aspects of organ donation and transplantation." *Indian journal of urology* 25.3 (2009): 348-355.

neurologist, must be obtained six hours apart. Transplant operations are governed by the Authorization Committee and Appropriate Authority, who make sure that contributions are voluntary and unaffected by financial factors. The AA is in charge of hospital licensure, malpractice investigation, and the removal, storage, and transplantation of organs. The Act's implementation has been fraught with difficulties in spite of its extensive provisions. Organs are still traded commercially, frequently passing for legitimate gifts. Deceased donation programs are limited in their success by the lack of understanding and acceptance surrounding the concept of brain dead.⁷

Brain Death Definition

- **Brain Death:** A state where all brain function ceases irreversibly. While the heart may still function due to ventilator support, the patient is legally considered dead.

Legal and Procedural Framework

- **Transplantation of Human Organs Act (THOA):** Defines brain death as irreversible loss of brain-stem functions, confirmed by a medical board.
- **Advisory Committee:** Provides guidance on transplantation policies, consisting of administrative and medical experts.
- **Authorization Committee (AC):** Evaluates non-relative donor applications to prevent exploitation and ensures genuine intentions.
- **Appropriate Authority (AA):** Regulates and licenses organ removal, storage, and transplantation. Inspects hospitals, enforces standards, and investigates violations.
- **Competent Authority:** Grants permissions for near-relative transplants and oversees the transplant process within institutions.

Types of Donors

1. Living Donors

- **Near-Related:** Immediate family members (parents, siblings, spouses) and, as of 2014, grandparents and grandchildren.
- **Non-Related:** Individuals unrelated to the recipient but willing to donate altruistically, subject to AC approval.
- **SWAP Donors:** Facilitates transplantation when a near-relative donor is incompatible with the recipient by swapping donors between pairs.
- **Foreign Donors:** Allowed only if they are near-relatives of the recipient, with certification from the donor's embassy.

2. Deceased/Cadaver Donors:

- Donations occur after brain death or cardiac death. Consent can be given during the donor's lifetime or by relatives posthumously.
- This Act defines critical terms such as **donor, recipient, hospital, and brain death.**
- It outlines its **applicability, covering aspects of organ and tissue transplantation**, including conditions under which organs can be removed from living or deceased individuals.
- Specific provisions, such as Sections 3-9 of the Act, **provide for the removal of organs or tissues** from both living and deceased donors. This includes scenarios where the donor is brain dead, a minor, or an unclaimed body in a hospital. **Consent procedures are detailed**, emphasizing the need for voluntary and informed consent.
- Sections 10-12 mandate that hospitals performing organ or tissue removal, storage, or transplantation **must be registered**. It specifies conditions for registration, including necessary infrastructure, facilities, and qualified personnel.
- Under Sections 13-13D of this Act, an **Appropriate Authority has been established for each State or Union Territory**. The said Authority is responsible for granting registrations to hospitals, enforcing the Act's provisions, and conducting inspections.
- Section 13A of this Act provides for the establishment of Advisory Committees to assist the Appropriate Authority. These committees, comprising medical and legal experts, advise on technical, ethical, and legal issues related to transplantation.
- One of the crucial aspects of the Act is its **strict prohibition of commercial dealings in human organs** as provided in Sections 19 and 19A.
- It criminalizes the **buying and selling of human organs**, including advertising for organ sales. Violations are punishable by imprisonment and fines.
- Section 24 of this Act **empowers the Central Government to make rules** for the implementation of its provisions. As empowered by this provision, the Central Government has framed the **2014 Rules**.

Current Challenges

Limited Facilities: Scarcity of ICUs equipped for brain death diagnosis, mainly in large cities.

- **Consent Difficulties:** Issues in obtaining timely and informed consent from relatives, especially in the absence of immediate family.
- **Equity Issues:** Predominance of private sector in organ transplantation creates disparities, with the wealthy having better access compared to poorer

⁷ Mathiharan, Karunakaran. "Ethical and legal issues in organ transplantation: Indian scenario." *Medicine, Science and the Law* 51.3 (2011): 134-140.

individuals. State funding for transplantation is lacking, exacerbating inequities.

Conclusion

Organ transplantation in India represents a major medical advancement but faces significant challenges related to accessibility, ethical practices, and equity. The system tends to benefit wealthier individuals and is hindered by logistical and regulatory issues. Addressing these problems requires comprehensive reform to ensure fair, ethical, and widespread access to transplantation services.

Case Laws

The Court relied on "Common Cause v. Union of India" (2018) 5 SCC 1 "for highlighting the importance of upholding right to life, bodily autonomy and privacy. The right of organ donation being a personal right could not be recognized as being subject to the consent of the spouse. A spouse does not hold supervening right to control a personal decision of the donor. However, the only caveat of free consent and an informed choice on the donor's behalf has to be ascertained"⁸.

Neha Devi v. Govt. NCT Delhi, W.P (C) 8671/2022, decided on 30 -5-2022.

"The respondents were directed to consider the application of the petitioner afresh and the same could not be rejected on the only ground of non-availability of the No objection certificate by the spouse" ⁹.

Organ Transplant scams in India

Bangalore Kidney Racket (1990s)

In Bangalore, where the police found 100 cases of men claiming their kidneys had been removed without their knowledge and sold to people in the Middle East and the Gulf who needed renal transplants, the outrage over doctors allegedly tricking illiterate villagers by removing their kidneys and selling the organs to wealthy Arabs is still raging¹⁰.

In Jaipur

According to ACP Gandhinagar Gopal Singh Dhaka, the police's ongoing investigations have revealed that three private hospitals in Jaipur have been under investigation for performing 184 organ transplant procedures in 2023 on the basis of fictitious no-objection certificates (NOCs), with at least half of the cases involving Bangladeshi donors and recipients. In

the meantime, the Jaipur police on Thursday also detained two more West Bengalis who were affiliated with the Kolkata-based Med Safar Private Limited, a company that the Fortis Escorts Hospital in Jaipur signed an agreement with a few years ago to supply the hospital with organ recipients and donors. The police claim that Fortis will be involved in 98 of the cases involving a forged NOC in 2023 and in 55 of these instances, both the donors and the recipients were citizens of Bangladesh. Since 2019, 514 transplants have been performed in the three institutions, with over 40% involving, according to police officials, Bangladeshis. According to DSP Yadav, the Bangladeshi nationals have also disclosed that the kidney donor used to receive ₹2 lakh for each kidney, while the beneficiaries used to pay ₹10 lakh. "False records were created, and the hospital failed to confirm information or establish a board prior to completing the procedure in accordance with procedures. We believe the syndicate may have also received kidney transplants from other facilities"¹¹. "We are yet to receive complete details from Jaipur regarding the donors and details of more cases of organ donation at the hospital in the last three years"

Conclusion

Although organ transplantation is one of the biggest advances in medical science and technology, not everyone can benefit equally from it. Cadaveric donation benefits the wealthy in India disproportionately; it helps very few patients in need and frequently takes advantage of the underprivileged. One of the main pillars of India's efforts to control organ donation and transplantation is the Transplantation of Human Organs Act (THOA), 1994. The Act offers a thorough legal framework to guarantee the moral and legal conduct of organ transplantation, safeguarding both donors and recipients. The Act's application and effects have been further reinforced by notable case laws and judicial actions.

The THOA has undergone amendments to address new issues and enhance the regulatory framework, guaranteeing its continued applicability in the face of changing medical practices. Although the Act has effectively reduced the illegal organ trade and increased public awareness of organ donation, further work is needed to overcome implementation issues and advance a morally-driven organ donation culture. Police continue to uncover organ transplant rackets despite the advancements achieved by THOA. The medical personnel, intermediaries, and a few complicit doctors are the real offenders; they ruin the lives of the impoverished by taking advantage of them for financial gain.

India's organ transplant policy is still developing, but the Transplantation of Human Organs Act, 1994, which upholds human dignity and ethical medical practice, is still an essential piece of legislation. This Act's

⁸ <https://www.scconline.com/blog/post/2022/06/13/del-hc-right-to-organ-donation-is-personal-and-inalienable-spousal-consent-is-ultra-vires-the-provisions-of-transplantation-of-human-organs-and-tissues-act-1994/>

⁹ <https://www.scconline.com/blog/post/2022/06/13/del-hc-right-to-organ-donation-is-personal-and-inalienable-spousal-consent-is-ultra-vires-the-provisions-of-transplantation-of-human-organs-and-tissues-act-1994/>

¹⁰ Rai, Saritha. "Bangalore doctors charged in kidney-removal racket." *India Today*, 17 June 2013, www.indiatoday.in/magazine/indiascope/story/19950228-bangalore-doctors-charged-in-kidney-removal-racket-806974-1995-02-27.

¹¹ Sengupta, Senjuti, et al. "3 Raj hospitals under lens for 184 illegal organ transplants last year." *Hindustan Times*, 3 May 2024, www.hindustantimes.com/india-news/3-raj-hospitals-under-lens-for-184-illegal-organ-transplants-last-year-101714676530677.html.

significance in the fields of healthcare and human rights is demonstrated by its effect on saving lives and encouraging generosity in organ donation. Thus, while raising donation rates is a worthwhile endeavor, it is imperative to consider the larger picture. The social and healthcare systems of industrialized Western nations, while India differs greatly from them, are the source of many transplantation philosophies and practices. Therefore, India has to create a framework for organ transplantation that is fair, open, and devoid of oppression.

This will be a long-term, difficult project that is probably connected to the larger fight for a more sophisticated, universal healthcare system.