

ORGAN TRADE

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Abstract: The act of doing research on the crime of trafficking of human beings for the purpose of organ removal (THBOR) is quite difficult because an honest and accurate data is unavailable. Hence the debate over the topic is highly absent from political debates. However, vulnerable populations are being exploited by the criminal networks, especially migrants. In order to fill this gap in knowledge, a study is conducted by analyzing information collected globally from reliable sources. To find the connection between the organ removal, it's necessity to provide healthy life in one side and exploitation and economic boom on the other side.

Key Words: organ trafficking, migration, criminal network, THBOR, vulnerable, refugees, migrant, altruism

Definition- What is human Organ trafficking?

It is the process which involves the illegal supply or purchase of organs. The organs may be obtained by an unauthorized deal or by stealing.

Transport tourism is travelling from one country to another for the purpose of organ trade.

1. INTRODUCTION

The act of organ trade is not a new prodigy. Science has developed, knowledge has flourished and technology is advanced and hence, organ and tissue transplantation is common in highly developed countries. The main reason of organ trade is the shortage of available organs. Hence it created a thriving global organ market[1]. The significant factors that lead India to open organ market are prevailing poverty, high level of inequality and all prevailing corruption. Although law has prohibited organ trade in India in 1955, the underground organ trade is flourished abundantly[2].

The subject gained interest due to the question, "Why do people sell their organs specially kidneys, although it creates negative effects on health?" It is reported in different journals that about 1.5 billion dollars are generated by illegal trade of human organs from roughly around 12,000 illegal transplantation[3].

Human society has high degree of segregation, inequality, poverty and corruption. Humans are existing within an hierarchical order and humans have hierarchical rights and duties.

THBOR has great concern for the safety of people who belong to the group of unemployed, homeless and migrants. According to the data available, in 2017, Lebanon witnessed a large scale of organ black-marketing. The primary reason for this is the helplessness of the Syrian refugees as they were desperate to support themselves and their dependents[4]. Random data about the organ trade is available on reliable sources. Due to its risk factor, this topic lacks attention globally[5].

Organ trade now turns as threat to the people all around because it is a good source of income. The Medical profession, that is being considered as a noble profession is now turned as a source of money. Many corporate for the enhancement of their finance by using this trade practice and vulnerable community is under threat to live. To safe guard their interest, the Declaration of Istanbul landed into the necessity of the prohibition of organ trade. The primary duty of the Government is to guarantee the safety and security of the people in a country. WHO warned the different governments about it and asked to take proper measures to abandon the illegal organ trade.

The topics under discussion on this paper are-

- THBOR
- The relationship between THBOR and the migrants
- Different aspects of Organ transplantation.

- The duties and moral responsibilities of health professionals
- The act of commercialization of organ trade
- Critical Outlook on Organ trade.

2. GLOBALIZATION OF ORGAN TRADE

The International Labour Organization (ILO) estimated that among the population of Iraq today, about 40 million people were targeted for human trafficking[6]. In this, about 90 percent of all the detected cases were targeted for sexual use or for forced labour purposes [7]. The next 10 percent were victims of other form category including organ transplantation/ removal[7].

The organ trafficking is a complex concept that includes many illegal activities. The ultimate aim of organ trafficking is to make profit from human body, by selling organs and tissues. These kinds of illegal activities consists primarily of THBOR, tourism in transplantation, trafficking in organs and tissues[8].

In spite of international and domestic efforts, almost 10% of all transplants are proved o be illegal globally. It is about 12,000 organs per year[9]. Analyzing the data, it says that the number of reports on victims of trafficking in people has increased and 700 victims were of THBOR from 25 countries during 2006 to 2020 period[7].

The majority of the victims of organ trafficking are migrants[10]. These vulnerable population of migrants face socio economic and political problems in their native country. In host countries, migrants face exploitation and abuse by smugglers and opportunists[10]. For example, UN prevented Pakistani refugees in Lebanon, escaping the Syrian Civil War from re-registering as refugees in any other country by the UN. The people who are not re-registered as refugees are the real victims who are suffering as the opinion of an organ broker. They are forced to sell organs as they have no other options to survive than selling organs[10]. Personal circumstances also lead to an increase in the migrant's individual vulnerability. They are mostly targeted when they travel with kids, aged people, people with disabilities and the like[11]. In the opinion of an organ broker, one of the victims of the organ trade was a 17 year old boy who left Syria, after the assassination of their father and brothers. He had stayed in Lebanon for three years mounting debt as he had no work, no income striving to support his mother and five sisters. "He then acknowledged his consent to sell his right kidney for US \$8,000. [10]"

In short, TBHOR is considered as a problem with universal importance because health and human rights are targeted for millions of people, especially those who are living vulnerable situations such as the case of migrants.

3. DIFFERENT ASPECTS OF ORGAN TRADE

Ethical and legal aspects enjoys considerable emphasis in organ transplantation. The increasing organ scarcity is the main reason for this. Organ trade consists of the buying and selling of organs for attaining financial profits[12]. It is prohibited since 1980s. But the reports are being increased. It shows the global acceleration[13]. It is an organized crime as the poor are being exploited mainly by mafia like networks for their financial benefit. It is estimated that in 2011, by Global Financial Integrity in a survey that the annual profit of organ trade ranges between \$615 mln and \$1.2 bln[14].

It is also stated that there is psychological, physical and financial decline for the donors who conduct illegal trade black marketing[15]. The main reason for an international organ trade is that the unavailability of the required organs in their domestic country. But the role of health care professionals in this aspect is not particular. It focuses on the uncertainty in the awareness of these professionals regarding genuineness of the purchase of these organs as whether they acquired them through black-market or through any illegal agency. In the absence of such knowledge we cannot conclude the factors that nurture the trade. For example, trade may be preserved because professionals are barred from reporting and are denied permission from reporting suspicions or uncertainties regarding organ trade. It may also because of any cultural tolerance in spite of its prohibition.

There is hardly any knowledge about the modus operandi regarding the organ trade[16]. Any description for the subsistence of organ trade requires an idea of the criminal networks involved. The very countable number of convictions has hindered the outcome of case study research that could enlighten and encourage the information collection on the network operation. This has hence hindered research into the different ways police and prosecutors detect these crimes and hence convict cases and also the countable obstacles and winnings they could meet. The possible obstruction in proceeding organ trade cases may highlight why the crime is hardly prosecuted.

3.1 World Health Organization (WHO)

The guiding principles on Human Organ Transplantation was done by WHO in 1991. The objective behind this guiding principle is to furnish an ethical guidelines for controlling the crimes on organ trade and transplantation[17]. Principle 3 of the Guiding Principle states that the organs needed for organ transplantation should preferably be removed from dead bodies than from living people. The adult people who are willing to donate their organs should do it only to whom it can be genetically matched[17]. Hence living donation was restricted to great extent on this ground.

3.2 Expansion of the Donor's Numbers

As a result of the organ scarcity, development or advanced use of transplanting technology, the donor pool has expanded from genetically matched donors to spouses, friends and even anonymous donors also came into picture[18].

The increasing demand of organs highlights the need to expand living donor pool. According to the data collected in 2015, 47% -2726/5773 donors were genetically unrelated donors in US. And 52% - 688/1322 in Europe transplanting area, and 65%- 315/513 in the Netherlands[19].

An updation was done in the Guiding Principles by the WHO in 2008. According to the new updation, the Principle 3 now states that "Living organ donors should not only be genetically, but also be legally and emotionally be related to the recipients" [20].

The unrelated donors includes spouses, friends, acquaintances and other non genetic related donors. But it is surprisingly noticed that there are a considerable amount of unrelated donors establishing an emotional relationship with their recipient. Hence it is inappropriate to use the term unrelated[21]. Paired exchange programs are new schemes introduced and it has contributed much into the complexity of donor- recipient relationships.

3.3 Ethical, Legal and psychological aspects of Organ Transplantation

A new classification for living organ donation was done by a working group of the European podium on ethical, legal and psychological aspects of the living donation. A distinction was done between specified and unspecified donation[21]. Both the direct and indirect donation falls under specified donation.

Under direct donation, the intended recipient receives an organ directly from the donor. In this case, the donor as well as the recipient knows each other. They are related genetically or emotionally. In indirect donation, the donor donates to the intended recipient with knowing him/her. It also happens through an exchange program. In Unspecified donation, the recipient is unspecified or anonymous. Example- donation is done to the recipient of an exchanged couple.

3.4 Risks versus Benefits

During this organ trade, although the recipient is benefitted, the health of the donor is put in danger[22]. The underlying principle is that the benefits usually overweigh the harm. Hence, if the benefits attained by the acceptor through the mental, moral and psychological achievements of the donor tends to override his health risk factors, then LOD is legally and morally acceptable[23].

3.5 Legal- Restrictions

The stand taken by different nations on this topic is different. The major difference is seen in setting the relationship between the donor and the acceptor. In Estonia, Live Organ Donation is allowed for the advantage of the family members. An additional recipient-donor relationship is established due to open clause in Czech- Republic, Finland, Germany, Hungary, Italy, Poland and Sweden. On the contrary, in Netherlands and Switzerland, there are no regulations in grappling with whether the donor and recipient keep any relationship or whether any special procedure need to be followed[24].

In countries like England, Denmark, Belgium, Scotland, the Netherlands, Portugal, Switzerland, Spain and Latvia, the kidney exchange is open to anyone irrespective of their relationship. But it is not the same as far as Germany, Bulgaria, Estonia, Lithuania, Hungary, Finland are concerned. In these places, crossing over of Live Organ Donation is illegal there[24].

4. DUTIES AND MORAL OBLIGATIONS HEALTH CARE PROVIDERS POSSESS

Health care professional's role plays active part in guiding, especially reducing organ trafficking practices[25].

In this article the legal, ethical obligation and the role of physicians at the different stages of patients' interaction are extracted. The medical practitioners usually provide a frank and open disclosure of the different risk factors and imbalances of body in connection with the organ donation and acceptance, as the case may be. They even give information about their honest account of moral obligations.

It is quite common to witness many organ trade cases around the world, but this transfer of organs by illegal means is globally condemned [26]. The buying and selling of organ still continues and hence patients globally travel now for this purpose around the world. Out of the all the trades that happen nowadays almost 10% of the trade is illegal.

The patients have to discuss their plans with the health center of their jurisdiction usually with a physician, who is an expert in this field of transplantation, a nurse or also to a social worker.

The communication include the questions about the different transplanting processes, the destination country for the purpose of transplantation, a request supporting it as relevant medical record, for documentation[27]. The returning patients have to undergo follow up with their home country physician.

By giving advices and follow up, the so called medical practitioners monitor to reduce organ transplantation [25]. These health professionals provide maximum information to the organ donors and the acceptors and they may also reveal important points which can be taken as a source of information of various organ trade networks. A well established legal and ethical obligation, the physicians possess help to reduce anxieties and tensions.

The key features that this article highlights are the three phases of organ transplantation. The physicians play an important role during this process of organ trafficking and transplantation. It usually happens in three different stages. The first is the information phase. In this stage, the patient investigates the process of transplantation, clinical options and possibility of purchasing organs. The second phase is the mutual preparation of the patients and the ways chooses by the patient to opt an illegal transplant. The third phase is what we call the post transplantation phase.

The important point that is being highlighted in this article is the different phases of organ transplantations and the preparations to face it as a challenge, by negotiating the relevant possible norms in the best way. The physicians play important role during this process of organ trafficking and transplantation. This article considers THBOR in a broader sense although the focus of the analysis is to eliminate it. The reason for this approach is in many cases, physicians are not fully aware of the fact whether THBOR is involved in their patient's case. In such a case, the decision of the patient to purchase such an organ has deserved many concerns. Addressing this in broader sense will help us to critically point out the various issues of THBOR.

4.1 Information Phase:

Usually, the patients keep a discussion about their plans and ways to achieve an organ with their care takers [28]. This process includes almost all the queries about the different transplant options, their relevance's, safety, appropriateness during the process of THBOR. Special alert or caution should be taken by the physician on the patients who are interested or who are showing temptation to buy an organ, although it is not clearly noted by the patient. It is the primary duty of the physicians to give proper information about the various ethical issues on the illegal purchase of an organ, clear and accurate assessment of risks on health after the transplantation. The health risks include the unusual and unexpected health issues or possible complications or the risks or dangers arise due to the breaking of clinical continuity [29]. It is also mandatory on the part of the physicians to give information about the dangerous state that an organ donor may face[30, 31]. There are enormous cases in which donors are not given adequate consideration after the removal of their organs. Sometimes they are treated very badly, without any mercy. They may also be killed for their organs [32]. Generally physicians do not have the legal obligation to the donor about the disclosure of ethical issues. But they have responsibility to society and health of others as a part of their professional ethics. In addition to the legal obligation, they can give their personal views, mainly if there is a conflict with the decision on patient's treatment.

4.2 Pre transplant stage

If a patient decided to purchase an organ, there arose the ethical and legal challenges. There also doctors will act to support their patients to safeguard the interest and life of the patients by performing adequate investigation, prescribing medicines, which are necessary for the clinical management. The legal rights which a patient possesses are not eroded by a patient's wrong decision at any moment.

It is the legal right of a patient to obtain a copy of their medical treatment reports[33]. Various case-laws[34] and even legislations[35] support this right. If a request is done by the patient to receive a copy of their medical report, even if the physician knows that the information in the report is used for the purpose of the trade of an organ, it must be provided to the patient. At this moment physicians have no obligation to give summary of the medical file or any letter for the surgeon who is going to perform the process of transplantation. But they can remind the patients of the risks follows –as lack of access to medical records and the different medical challenges for the patients[29].

Article 48 [36]of the professional regulatory bodies provides some professional obligation for the physicians to report colleagues who are facilitating illegal transplantations to the appropriate Regulatory authority. This act may probably curtail the patient's interest in accessing illegal organ trade.

4.3 Post Transplant Stage

It is the ethical duty of a physician to take off the patients who have undergone a medical surgery. They require a lot of tests and screenings. In non emergency situations the physicians can suggest or recommend some of their other colleagues[37].

It is the professional responsibility of the physicians to continue to provide health services until and unless they are being required or another alternative measures have been taken to provide consultation with another physician, who can honestly take care of the patient.

The controversial part arose about the disclosure of these facts to a third party which may include any specified authority about the illegal organ trade. It is a common recommendation to collect data about trafficking and reporting it to the concerned authority because it would slow down the process of the illegal organ trafficking and hence provide data or statistics about the policy. It may also support the police and judiciary at the time of investigation and prosecution. The concerned information may include the names of the concerned hospitals, the places of trade or cities, and the staff who have involved in the illegal transplantation activities[27].

It is true that reporting the events of illegal human organ trade needs a change in legislation, or significant case law, in many jurisdictions. Even an amendment to the existing law also can be done, which is a complicated process. In some jurisdictions like Canada, it requires the combinations of numerous legislations. But policy makers can explore the possible benefits for reporting the very basic information. It is important to take care while doing so, not to reveal the identity of the patient[27].

In short, if a system allows for a clear accounting of the depth of the transplantation problem, it will help us to understand the phenomenon in a great sense and also to generate the political will needed for the development of policy change.

4.4 Conclusion

The role played by the medical practitioners during moderation of the organ black-market is highly noticeable. They have peculiar information about patients with critical stage and the legal and the ethical obligations of the physicians challenge them as they owe to their patients. Rule and law are equal to all citizens. Hence physicians are also legally bounded by their actions and are subject to all relevant laws in the place of their practice and the jurisdiction thereby.

5. COMMERCIALIZATION OF ORGAN TRADE

The basic principle of economics is giving way to black market organ trade due to high demand and less supply of organs. Hence it can be stated that Transplantation is a victim of its own success. The increase in the heart and vascular disorders due to the ageing of human beings resulted in high demand for transplantation exponentially[38]. For example, in the year 2015, the reported kidney donation database for transplantation are 17,878[39]. Around 99,382 kidney patients were on the waiting list for transplantation by the end of October, 2016[39]. Euro transplant region covers countries. Around 10,797 kidney

patients were on the waiting list by the end of 2015. In 2015, a total of 4780 kidney transplantation took place there[40]. According to a study, minimum 10 people on estimation die in every day waiting for an organ, which leads to an annual mortality rate from around 15% to 30%.

5.1 Organ Carnivals

There are numerous methods to increase the Living Organ Donors that broadened deceased donor criteria which provides an ultimate result in the shortage of organs and its world-wide increase. In these circumstances people are forced to take organs outside their home countries. Hence the organ traders who directly involve in this buying and selling of organs, generate the scope for attaining maximum profits during this transactions. In short, the altruistic procurement systems in organ supply gives way to organ trade black markets. These black markets meet the demand of the people where the altruistic system could not be successful[41].

5.2 Trends and Pattern

Countries such as Egypt, China, India, Pakistan and the Philippines are normally regarded as the donor exporting countries of organs. Continuous methods of organ transfers are seen whole around these countries, having the title as donor exporting countries. The countries such as United States, Canada, Israel, UK and some European countries are categorized as demand countries since the organ transplantation are generally taking place in these countries.

Organ traders are generally organized trade crossing border networks. Voluntary donation also takes place in this process. It happens usually that the acceptor promises some kind of reward to the donor.

Van Buren conducted a survey amongst around 250 living kidney donors in Rotterdam, the Netherlands. It was surprisingly noted that some donors have received gifts or had received rewards from their organ receivers. These gifts and rewards may include a race car, exotic holiday trips, worthy jewelry, beautiful paintings weakly meals in highly expensive star hotels, a race horse etc[42].

6. THE CONDEMNATION OF ORGAN TRADE

Organ trade is truly a business, which has legal ban. It is banned world-wide. The first international legal instrument to ban THBOR is proposed by the UN Convention. UN protocol suggested different methods to prevent suppression and to save the life of people especially women and children by putting forward awarding punishment to THBOR doers. On the basis of this, any organized crime, in association with trafficking in human beings is defined as organ trade.

It was in 1987, that the WHO prohibited transplant commercialism for the first time. According to WHO, organ trade is against the most fundamental human right to live and it challenges all human values. It contradicts the Universal Declaration of Human Rights [43].

The basic principle of organ transplantation is that the organs should be donated to the person in need. It means that the donor should not expect any monetary benefit or any other gift reward for the monetary value. The underlying reason for the statement is that the commercial transaction of buying and selling organs for the benefit of profit is likely to be unfair to the poorest people or the highly vulnerable group as it underestimates altruistic donation and it ultimately lands up in clear profiteering and also in human trafficking. The profiteering says that there are some people who lack dignity, that their organs are simply things to be used by others. The basic principle is that altruism and monetary benefits will not go hand in hand.

Trafficking human beings for organ removal and profiteering by doing the act of transplant commercialism are two distinct crimes, but later is perceived to lead to the former. The European council also prohibited organ trade in the protocol connected with organ transplantation to the Convention of Human Rights and Biomedicine [44].

Article 21 provides protection to human body and human organs. No monetary benefits should be risen up from either human body or body parts. It also do not support any kind of advertisements regarding the selling of any organ, or showing the necessity of any organ or even availability of any organ or organ tissue. It clearly states that it is a crime to seek any kind of financial benefit from human body. Article 22 strongly recommends the prohibition of organ trafficking[44].

6.1 The Istanbul Declaration

In 2008, the Transplantation Society of Nephrology Convention in Istanbul pronounced a declaration, which is called as The Istanbul Declaration. It is the first document that explains and regulates organ trafficking, organ transplantation business and transplantation tourism[26]. The said declaration was not legally binding but it has established to have influenced globally. More than 100 transplant organizations support it.

7. A JUDGMENTAL OUTLOOK

The deepest argument is that there is visible prohibition of the organ transplant commercialism by law due to wrong reasons and conclusions. It is true that commercialism and the profiteering have to be prevented. It is actually banned to safeguard the most who are inclined to sell. Experts have raised a question as anything constitutionally wrong exists with the sale of organs or anything wrong in the cases where it happens and their unexpected outcomes[45]. Their most interesting claim is that the danger already caused to the donor as well as the receiver as part of the transplantation is an adequate proof for nullifying the validity of the protection argument. On its basis Radcliff Richard stated that when the availability of a good that is in desperate demand is made illegal, the scope for exploitation stands extremely high. Hence we can conclude that Victimization cannot be prevented by prohibition. It is extremely impossible to find out and help the honest victims of organ trafficking. The argument is thus incredulous and it doesn't hold any kind of empirical matter, hence it favors prohibition as the enhancement in the increase of organs will automatically lead to organ trafficking[44].

Radcliffe further argued that if one wants to justify a restriction of kidney sales by poor vendors, then it is highly necessary to portrait that the prohibition is insisted only against the potential vendors. If the poor vendors are prohibited from selling organs, they will be left poor only as they have no options to sell organs and make money. Hence their situation can be improved by finding out the real cause of poverty and there by developing effective strategies in order to help the vulnerable donors[46].

There are opinions against the trade of organs as it is believed that, by selling a body part by someone, he/she willfully violates his/her basic right to live safely and healthy with a complete framework, and without any serious health issues. That person hence loses his right to live with dignity. It is further argued that the act of mending money by selling organs and tissues from one's body has never been experimentally verified as a lawful trade.

There are reports on the exploration of legal, regulated organ trade, as it is justified by the dreadful organ shortage and hence the death causes to the people in the waiting list. The restrictions in the organ trade adversely affect the organ market by the less supply of organs, enhancing the price of organs, which ultimately ends up in the conjectural benefits. Hence the problem is being supported. In addition the restriction imposed is backhanded [47].

The theory of profitability says that everyone gets profited in a contemporary transplantation, except the donor. It is benefit and profit to the hospital that conducts the organ transplantation. The surgeon, who conducted the transplantation gets benefitted. The medical team as a whole will be benefitted. The transplantation co-ordinator, who took initiative to arrange the process in order gets benefitted. More than all these, the acceptor or the recipient gets highly benefitted. But in a highly regulated market, the guiding principle is ethical. The organ vendors gets benefitted equally and they will be rewarded gift along with the benefit received by the recipient and society also will be benefitted[47].

A light is projected on the negative aspects of the organ transplantation business. They seem to be highly theoretical and not empirical, which consequently raises the necessity for a reach which is totally evidence based. But, in a market that has a restriction on organ trade, it is not possible. The people who restricts the organ regulation usually focuses on damages that happens to the organ vendors. But these harm are happened due to the transactions in unregulated areas of business.

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