



*HUMAN ORGAN
TRAFFICKING*

Dissertation

Introduction

The trend of human organ traffic started in the late eighties when a number of cases were highlighted by the media over the traveling of foreign individuals along with their doctors for treatment in Asia and Africa.¹ However, later on, it was found that traveling was a part of treatment by buying organs from developing country illegally like India, Malaysia, Pakistan, and others.² Trafficking is an illegal and punishable crime for both buyers and sellers.³ The ethical and legal fact here is that the authorities are not limiting human organ transplantation but only illegal practices of human trafficking. Human organs such as kidneys (most common), livers, lungs, hearts, and even brains are being illegally sold to patients.⁴ On the contrary, in countries like the UK, USA, Europe, and even in India, it is illegal to sell an individual body organ.⁵

The conventional law has been that the human body cannot be a property. According to customary law, it is entrenched that there can be no property in a corpse.⁶ This implies a body or body parts cannot, for the most part, be stolen. This guideline has gone under expanding examination in late years accordingly of developing logical, therapeutic, and conceivable commercial and criminal considerations. In *R v Kelly*⁷, the Court of Criminal Appeal held that body parts (in that occasion, anatomical examples) could secure the body property for the reasons for s4 of the Theft Act⁸ if skilled work had been performed on them. As indicated by Rose LJ, 'the

¹ Kishore, R. R., 2004. Human organs, scarcities, and sale: morality revisited. *Law, Ethics, and Medicine*, pp. 362 - 365.

² Human Tissue Authority, 2016. Sale of bodies, body parts, and tissue. The regulator for human tissue and organs.

³Cherry, M., 2015. *Kidney for sale by owner: human organs, transplantation, and the market*. Washington, D.C.: Georgetown University Press.

⁴ European Parliament, 2015. Trafficking in the Human organ. Policy Department, pp. 549-055.

⁵ Koplín, J., 2014. Assessing the likely harms to kidney vendors in regulated organ markets. *The American Journal of Bioethics*, 14(10), pp. 7-18.

⁷ <http://www.e-lawresources.co.uk/cases/R-v-Kelly-1999.php>

⁸ 1968

customary law does not stop. It might be that if on some future event, the question emerges, and the courts will hold that human body parts are equipped for being the property for the motivations behind s4, even without the procurement of various characteristics, on the off chance that they have utilisation or essentialness past their minor presence. This might be so if, for instance, they are proposed for use in an organ transplant operation'.⁹ This announcement conveys the recommendation that the illegal misappropriation of a donor organ may in future be seen as burglary. It might be that lone the nonappearance of any legitimate test to the 'genuine donation' rule has kept that conclusion from being drawn as of now by the courts.

Meanwhile, in these countries patients and families have to undergo a legal procedure for an organ transplant (which is only allowed among blood relations).¹⁰ Furthermore, in Australia, if the donor were outside of being a blood relation to the patient, he or she would be financially compensated for the donation of the social services or the family of the patient.¹¹ It is a determined fact that organ donation is no myth and there is a medical history behind transplantation to save the life of an individual. Nevertheless, organ transplant or donation is a completely different area in comparison to illegal human organ trafficking. It is observed that patients who can afford to buy an organ travel around the world (in developing countries) to buy an organ¹². However, if an individual is found guilty of illegal organ trafficking, he will be charged with imprisonment or receive financial penalty under s32 of the HT Act.¹³ However, the research area of illegal human organ trafficking is broad and while looking at the legal standards of human organ trafficking

¹⁰ Rippon, S., 2014. Imposing options on people in poverty: the harm of a live donor organ market. *Journal of medical ethics*, 40(3), pp. 145-150.

¹² Koplin, J., 2014. Assessing the likely harms to kidney vendors in regulated organ markets. *The American Journal of Bioethics*, 14(10), pp. 7-18.

¹³ <https://www.hta.gov.uk/policies/human-tissue-act-2004>

across the world it differs from each other. Therefore, this essay would focus on the UK and international Law to approve this subject.

Xenotransplantation, Artificial Organs. This is the main part of the essay, need to say how the law should be improved/changed and how to do it. It asserts a moral justification for automatic and mandatory availability of donor organs for the purpose of saving another's life. He argues that this is at least as compelling as justification for compulsory juror service and forensic post-mortem examinations, the ethical concern of society has tended to focus on the dead, and their relatives and friends, to the detriment of the living who are in need of organs.

Xenotransplantation: transferring organs from animals such as pigs to humans. Animal organs are the closest in size to humans and they can also be reproduced at a much quicker rate than that of the primate – chimpanzees. From an ethical perspective, Muslims and Jewish individuals would be completely against it under religious grounds. Furthermore, there is little, if no successful transplant because they need human volunteers to be tested and also there's an extremely high risk of attaining deadly viruses and diseases that's before the body even rejects the organ because of tissue rejection. Rejection can take hours or even minutes leading to death, also known as 'hypercube rejection'. There is also "significant ethical issues in relation to the validity of an individual's consent for acceptance of a xengraft

Aims and Objectives

The objective of the research aims to highlight the trends of human organ trafficking in the 21st century; meanwhile, it has also mentions the measures undertaken by the UK and international authorities to stop the increasing number of cases of human organ trafficking trends.

Background

In the world, the need of human organs is growing. There is an urge to sell everything now – perhaps even kidneys, livers, bone marrow, hair, and corneas of eyes. You can talk about selling a person into slavery, as well as selling to the authorities. For example, a human kidney can now be sold or bought for twenty to hundred thousand dollars, depending on the age and condition, part of the liver for 50 thousand dollars, bone marrow for 30 thousand dollars, and the heart for 80 thousand dollars¹⁴. Also, the popularity of surrogate motherhood is increasing, which can bring up to 30 thousand dollars. In general, from a slightly healthy person can get £1 million.¹⁵

According to doctors, a person can live with one kidney, but on condition of leading a healthy lifestyle. But there are special nuances. For example, if you lose one kidney, you need to be afraid of almost any infection.¹⁶ If the sale of organs in Ukraine is prohibited, then clinical trials of medications on humans are legal. But for testing the drug, a person gets a miser, at best - about a thousand hryvnia. By law, any person can become a "guinea pig" by signing a document on the consent of participation in studies. The study describes all the details - an experimental drug, possible side effects, the term of cooperation, etc. According to the official data, several hundred people give their consent to such tests every month in Turkey.¹⁷

In a case of *Williams v Williams*¹⁸ it is observed that by addition to his will the perished coordinated that his agents ought to give his body to Miss Williams. By letter, he asked for her to

¹⁴ Garcia, G.G., Harden, P. and Chapman, J., 2012. The global role of kidney transplantation. *Kidney and Blood Pressure Research*, 35(5), pp.299-304.

¹⁵ Danovitch, G.M., Chapman, J., Capron, A.M., Levin, A., Abbud-Filho, M., Al Mousawi, M., Bennett, W., Budiani-Saberi, D., Couser, W., Dittmer, I. and Jha, V., 2013. Organ trafficking and transplant tourism: the role of global professional ethical standards—the 2008 Declaration of Istanbul. *Transplantation*, 95(11), pp.1306-1312. Vancouver

¹⁶ Danovitch, G.M., Chapman, J., Capron, A.M., Levin, A., Abbud-Filho, M., Al Mousawi, M., Bennett, W., Budiani-Saberi, D., Couser, W., Dittmer, I. and Jha, V., 2013. Organ trafficking and transplant tourism: the role of global professional ethical standards—the 2008 Declaration of Istanbul. *Transplantation*, 95(11), pp.1306-1312

¹⁷ *ibid*

¹⁸ *Williams v Williams* 1882

incinerate his body, to put the fiery remains into a predetermined Wedgwood vase and to claim her costs from his agents. After the body had been covered at the heading of the agents, Miss Williams in this manner made it be uncovered and (on the grounds that incineration was not legitimate in Britain) sent it to Milan for incineration.¹⁹ She created set into a vase and guaranteed her costs from the agents. However, it was found that her claim failed. Moreover, an agent having legitimate ownership of a body may have an obligation to orchestrate its entombment. There is no property in a body, and a man cannot adequately discard it in his will. Besides, any bearings given by the perished as to the transfer of his body are not enforceable as an issue of law.²⁰

Organ Trafficking is an international crime which is punished infrequently. A perfect number is impossible to know but, a lot of cases ought to be brought under consideration from which a percentage can be extracted globally. Organs which are commonly traded are kidneys and the liver. It is found that about 100,402 individuals are currently waiting for kidney transplantation. Meanwhile only a number of 30,970 transplant has been conducted in 2015 as per as the legal statistics. In 2010, about 10,000 organs were sold across the world especially in India, Malaysia and other developing countries.²¹

In many countries, organ donation is allowed only on a non-reimbursable basis. However, you first need to obtain special permission from the court. In Russia, for example, the sale and purchase of organs are prohibited and donations can only be made free of charge. The only thing that a donor can rely on is payment for travel to the place of operation, residence, and

¹⁹ ibid

²¹ <http://www.foxnews.com/health/2012/05/30/consequences-rise-in-illegal-organ-trafficking.html>

food.²² Transplantation of organs is performed only by Russian state hospitals. The lack of proper legislation regulating organ transplants and related commercial interests, corruption, and fraud create significant preconditions for the development of illegal trafficking in human organs. There is an opinion that criminal transplantation of human organs acquires a large-scale character. Many cases remain unknown, both to the public and to law enforcement agencies. However, it is quite difficult to prove the involvement of a person in the transplant trade. It takes several years to trace the chain of supply of organs. At the same time, people are more concerned with their own pockets. They will have to sell everything that they have even themselves.²³

The organ market exists in many countries for example; in Italy it was discovered by commercial accident. 10 kidney disease patients were on dialysis due to the severity of their cases, who could not be otherwise treated, traveled to India, where they were able to transplant organs purchased through specialised agencies. The transplant was performed in clinics intended for such activity. In Italy, they had to be hospitalised because they were suffering from infectious diseases, transmitted through organs purchased from suppliers, poorly submitted to a sanitary inspection.²⁴ This market exists mostly in Africa, US, and Europe, were frequently in the newspapers, offers of kidneys put on sale. The UK Constitution, one of the most advanced in the world in the field of health, expressly prohibits the trade of blood and organs but there are people who are still ready to trade the organs for transplantation.²⁵ This market was detected in England, where a lawsuit was filed (which ended with the conviction of surgeons and the cancellation of their medical achievements) due to the purchase and transplantation of the kidneys of four

²² Rudge, C., Matesanz, R., Delmonico, F.L. and Chapman, J., 2012. International practices of organ donation. *British journal of anesthesia*, 108(Suppl 1), pp.i48-i55.

²³ Koplin, J., 2014. Assessing the likely harms to kidney vendors in regulated organ markets. *The American Journal of Bioethics*, 14(10), pp.7-18.

²⁵ *ibid*

Turkish citizens in favour of four English citizens²⁶. The market exists in many other countries, but with a constant characteristic: organs are always taken from poor people, and used for the benefit of the rich.

It is found in the case of *Dobson and Dobson v North Tyneside Health Authority and Newcastle Health Authority*²⁷ that a posthumous had been done by the respondents. The inquirers, her grandma, and children looked for damages after it was found that not all body parts had been returned for entombment, some being held for medicinal research. They requested to strike out their claim on the basis that it revealed no sensible reason for harm, it was held that the interest failed.²⁸ The closest relative has no privilege to recapture ownership of an expirer's body part which had been evacuated for examination. There was no responsibility for the body after death. The dissection procedure did not change a body part into a question equipped for possession. The claim was argued in change, bailment, and wrongful obstruction with the cerebrum and the offended parties could not set up that they had the privilege to ownership at the time the mind was discarded. The offended party's craving to find precisely what had happened to all the body parts was not an adequate purpose behind the prosecution.²⁹

As per The HTA³⁰, it is observed that *“a man cannot decide to whom their organ can be given when they pass on; nor can their family. Notwithstanding, the HTA perceives that there might be excellent conditions where this control may be reevaluated, however, the significance of*

²⁶ Fox, R.C. and Swazey, J.P., 2013. Spare parts: Organ replacement in American society. Transaction Publishers.

²⁷ 1996 (needs correct citation)

²⁸ Pascalev, A., De Jong, J., Ambagtsheer, F., Lundin, S., Ivanovski, N., Codreanu, N., Gunnarson, M., Yankov, J., Frunza, M., Byström, I. and Bos, M., 2013. Trafficking in human beings for the purpose of organ removal: a comprehensive literature review. The HOTT Project, p.15.

²⁹ *Dobson And Dobson V North Tyneside Health Authority And Newcastle Health Authority*: Ca 26 Jun 1996

³⁰ <https://www.hta.gov.uk/guidance-professionals/codes-practice>

keeping up the focal guideline implies that such outstanding circumstances would be considered with the best care before any piece of the agree standards were to be changed."³¹

For the situation under the exchange, the demand to the direct donation of one perishes kidneys to the patient's mother was not upheld and the organs were dispersed through UK, as indicated by the focal law. It is observed that clinical variables may have blocked the likelihood of consenting to the asserted wish of the donor in any occasion, the HTA's announcement makes it clear that, regardless of the possibility that clinically practical, the patient heading would have been slighted.³² This legitimate articulation makes a few suspicions about the lawful status of expired donations under the 2004 Act:

- Every expired donation must be unqualified,
- Any confinements appending to donations might be legally put aside and the donations regarded as unconditional.
- Every single perished donation in the UK must be dispensed through UK Transplant, NHS Blood and Transplant, the national assignment body, as per the focal standard of the HTA.

It is guaranteed, an arrangement archive on '*Asked for Allocation of a Deceased Donor Organ*' was released. Its most imperative capacity is to repeat and strengthen the two "general" standards of genuineness and even-handed treatment for all in view of clinical need. Subject to these, the archive sets out the conditions in which a demand for particular allotment might be considered. These incorporate the death of a planned living donor and other extraordinary cases in which an

³¹ *ibid*

³² White, S.L., Hirth, R., Mahillo, B., Domínguez-Gil, B., Delmonico, F.L., Noel, L., Chapman, J., Matesanz, R., Carmona, M., Alvarez, M. and Núñez, J.R., 2014. The global diffusion of organ transplantation: trends, drivers and policy implications. *Bulletin of the World Health Organization*, 92(11), pp.826-835.

organ from a perished donor may profit a nearby relative or companion.³³ The usage of the strategy is designated to NHSBT from which the determined regulations are applied. The requirement for consistency with the law, uniform application over the entire UK, and full comprehension by groups of the genuine way of organ donation is particularly underscored. It is observed that the counseling board with individuals accessible for an interview at all circumstances is likewise settled.³⁴ Despite the fact that the new strategy introduces some scope of choice for NHSBT, in cases, for example, that of Laura Ashworth³⁵, the HTA's announcement in regards to law and approach and its focal role of an unlimited quality stay in place.

Faced with this fact, it is certainly possible to say that there are a hundred thousand times more people in the world who die of hunger or infectious diseases, produced and aggravated in conditions of misery. Numbers can, or rather should serve as a guide for establishing social priorities and for defining health policies, based on epidemiological data and in the interests of the majority of the population.³⁶ But they cannot count as an ethical principle because each human life is different from another and has absolute value. One can give an example of rheumatism, which often causes severe endocarditis and nephritis, or Changes' disease, which causes myocarditis, preventable and treatable diseases, but which often ruin the heart and kidneys to the point of only transplanting as a solution.³⁷

But this objection also has no moral content applicable to the specific case. The option of concentrating resources on prevention and basic treatments, rather than on high-tech dependent repair therapies, is based on scientific and ethical principles, is even more effective and less

³³ *ibid*

³⁴ *ibid*

³⁶ Delmonico, F.L., Martin, D., Domínguez-Gil, B., Muller, E., Jha, V., Levin, A., Danovitch, G.M. and Capron, A.M., 2015. Living and deceased organ donation should be financially neutral acts. *American Journal of Transplantation*, 15(5), pp.1187-1191.

³⁷ *ibid*

expensive³⁸. But it cannot serve as a valid answer, either on a moral level or on a practical level, to the people for whom transplantation represents the only possibility of life. The practical and moral problem, therefore, persists in its entirety. Everyone, unfortunately, needs to recognise another reality. Especially corpses of young people, whose transplantable organs are often in perfect condition, whether they are premature deaths from illness or more frequently from deaths from the violence of accidents or crimes.³⁹

Legal Framework

World Health Organization

The WHO has been working towards moral principles in the field of human organ and tissue donation and transplantation. The main variant of the Guiding Principles on Human Organ Transplantation was received: concentrating on key issues, for example, free and intentional educated assent, and non-commercialisation of human organ and tissues.⁴⁰ In addition, these Guiding Principles were refreshed in 2008, expounding the denial of sale or buy of organs, and underscoring the connection between organ sales and human trafficking. In 2010, an updated form of the Guiding Principles has been distributed, which has received 'measures to shield the poorest and defenseless gatherings from transplant tourism and the sale of organs and tissues.'⁴¹ The amended Guidelines pointed out for uncommon the worldwide trafficking in human organs and

³⁸ Brun, R., Blum, J., Chappuis, F. and Burri, C., 2010. Human African trypanosomiasis. *The Lancet*, 375(9709), pp.148-159.

³⁹ Delmonico, F.L., Martin, D., Domínguez-Gil, B., Muller, E., Jha, V., Levin, A., Danovitch, G.M. and Capron, A.M., 2015. Living and deceased organ donation should be financially neutral acts. *American Journal of Transplantation*, 15(5), pp.1187-1191.

⁴⁰ White, S.L., Hirth, R., Mahillo, B., Domínguez-Gil, B., Delmonico, F.L., Noel, L., Chapman, J., Matesanz, R., Carmona, M., Alvarez, M. and Núñez, J.R., 2014. The global diffusion of organ transplantation: trends, drivers and policy implications. *Bulletin of the World Health Organization*, 92(11), pp.826-835.

tissues. The WHO measures and standards give direction to nations' health authorities and health professionals, yet they are not legitimately official in character.⁴²

World Medical Organisation

The World Medical Association (WMA) had issued a Statement on human Organ Trade, expressing the WMA 'denounces the buy and sale of human organs for transplantation, and approaches governments to find a way to keep the business utilisation of human organs. The WMA embraced its statement on Human Organ Donation and Transplantation. It advanced an arrangement in view of moral standards to offer direction to medicinal affiliations, doctors and other healthcare suppliers in issues identifying with organ donor and transplantation.⁴³ One of the key points was the general rule of non-commercialisation of human organs. S30 of the WMA stated that trafficking for organs must be restricted. Besides, financial motivating force bargains the intentionality of the decision and the benevolent reason for organ donation. Besides, access to required medicinal treatment in light of capacity to pay is conflicting with the standards of equity. Organs suspected to have been acquired through the business exchange must not be acknowledged for transplantation. Likewise, the ad of organs in return for cash ought to be restricted.⁴⁴ In October 2006, the WMA General Assembly modified its Statement and emphasised its forbiddance of commercialism. The WMA Statement intends to give direction to all health professionals, both individual and as individuals from restorative affiliations, however, has no legitimately restricting character.⁴⁵

⁴² *ibid*

⁴³ Cherry, M.J., 2015. *Kidney for sale by owner: human organs, transplantation, and the market*. Georgetown University Press.

⁴⁴ *ibid*

⁴⁵ *ibid*

Ethical Issues in Human Organ Trafficking

According to the legal framework, it is essential that developing nations build up a controlled, institutionalised, and ethical arrangement of organ acquirement; make awareness and sessions with doctors and people in general; redesign offices and institutionalise therapeutic care, and implement enactment for transplantation.⁴⁶ Organisations like World Health Organisation, National Kidney Foundation, and International transplant and nephrology social orders can have an essential part in encouraging activities in these basic regions.⁴⁷ Moreover, there ought to be unmistakably characterised implicit rules for health offices and professionals' parts in unregulated paid organ donations and transplants. Eventually, doctors and transplant specialists have the duty to guarantee to the best of their capacity that the organs they transplant were gotten maintaining the most astounding benchmarks of ethics.⁴⁸

Recommendations for Law Reform

Three other observations can be added concerning science and professions:

1. The obstacles to the advancement of knowledge, arising not from the limits set by Bioethics, but from the attempts to transform knowledge into private property. The patent application of human genome sequences, for example, is creating obstacles to the circulation of knowledge and to international scientific collaboration, which are essential assumptions and principles of the freedom of science.⁴⁹
2. Laws prohibiting the purchase and sale of organs (already approved in many countries, such as in England, through the Organ Transplantation Bill, in France, Russia, and some Latin

⁴⁶ Manzano, A., Monaghan, M., Potrata, B. and Clayton, M., 2014. The invisible issue of organ laundering. *Transplantation*, 98(6), pp.600-603.

⁴⁷ *ibid*

⁴⁸ *ibid*

⁴⁹ *ibid*

American countries) are not at risk; often present, to remain the dead letter. Unlike the human market from the time of slavery, exercised by methods that did not require what we now call professional specialisation, the organs cannot be transplanted in ship's holds nor sold in public squares. Transplantation requires highly specialised structures and professions, easily subject to records and inspections.⁵⁰

3. Considering the human tissue act 2004, it is observed that the act covers all the aspects of human organ trafficking however, it is important for the authorities to involve ethical standards within its legal roots so that appropriate results can be extracted. Comparing the current working of HTA, it is observed that with the developing in medical science, the ratio of organ trafficking can be reduced to a huge degree however a standard legal as well as ethical framework is required.⁵¹

Conclusion

Neither the basic knowledge nor the techniques for applying transplants can benefit from commercial operations performed with organ sellers and not with true donors who are practicing generosity toward their relatives. An analogy with slavery, however, may be broad, and sometimes, inexhaustible availability of human commodity, of labour conquered with wars, or bought and sold, have been over the centuries, perhaps for millennia, a major obstacle to the progress of science and technology. The same can happen if, in order to face the problem of the resources needed for transplants, we open up the possibility of buying and selling organs on a large scale, making it difficult to search for alternative solutions.

⁵⁰Manzano, A., Monaghan, M., Potrata, B. and Clayton, M., 2014. The invisible issue of organ laundering. *Transplantation*, 98(6), pp.600-603.

⁵¹ <https://www.ncbi.nlm.nih.gov/pubmed/17153521>

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