



## **BEYOND RITUALS - NAVIGATING LEGAL ASPECTS OF ORGAN DONATION IN INDIA'S RELIGIOUS TAPESTRY**

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### **Abstract**

In India, organ donation exists at the nexus of several religious beliefs and legal systems. This article examines the complex relationship that exists between the Transplantation of Human Organs Act of 1994 and its respective Amendments and the many religious viewpoints that influence people's propensity to give. Examining the religious subtleties and historical backgrounds that shape views regarding organ donation, the study delves into Hindu, Islamic, and Christian perspectives. In lieu of the empirical research, researcher has grasped the opinion of 40 people, in corresponding to which data analysis has been demonstrated. Along with ideas from projects encouraging awareness and education, challenges are discussed, including ethical issues and religious objections. The paper makes a case for peaceful cooperation between the legal and religious groups and offers directions for further research and growth in this crucial field of medicine.

### **Introduction**

Organ donation is becoming an increasingly important and urgent matter in India, where

millions of people suffer from organ failure every year. The seriousness of the matter is shown by a National Health Portal study that states that the lack of organs available for transplantation results in the death of around 500,000 individuals in India annually. The severe organ donor shortage, which hangs over the country's healthcare system, makes this terrible reality even more dire. Regrettably, a significant segment of society continues to be unaware of the potentially life-saving advantages linked to organ donation. With the organ donation rate in India lingering at 0.65 donors per million people as of 2020, the harsh figures offer a disturbing picture. There is a clear need for greater awareness of and participation in organ donation programs given the large discrepancy between the demand for organs and their actual availability for transplantation.<sup>1</sup>

Although there has been a noticeable increase in organ donation activities in India recently, there is still a significant gap between the growing need and the available supply of organs. A waiting list of more than three lakh patients serves as an example of the catastrophic situation, which results in the awful fact that at least twenty people lose their lives while waiting for an organ transplant every day. The population suffers greatly from the lack of organ donors, especially from deceased people.

The Health Ministry, a government agency, provides data that highlights the difficult task ahead. It shows that the total number of donors, living and deceased, has increased somewhat from 6,916 in 2014 to around

<sup>1</sup> Perappadan. (2023, August 5). *Organ shortage continues to cost lives*. The Hindu. Retrieved December 25, 2023, from

<https://www.thehindu.com/sci-tech/health/indias-poor-organ-donation-record-continues-to-cost-lives/article67161978.ece>.



16,041 in 2022. The growing need for life-saving organs, however, cannot be met by this expansion alone, underscoring the necessity of coordinated efforts to close the gap between organ supply and demand in India. It is impossible to exaggerate how urgent the situation is, as people's lives are still in danger and organ donation might provide them a second shot at life.<sup>2</sup>

### **Legal Framework**

In India, the Transplantation of Human Organs and Tissues Act, 1994 (THOA) was a landmark piece of legislation pertaining to organ donation. Acts governing the removal, storage, and transplantation of organs were passed with the primary goal of facilitating therapeutic treatments and prohibiting the use of human organs for commercial purposes. This groundbreaking law made it possible for brain-dead and genetically related living donors to donate organs, setting the stage for a methodical approach to the delicate procedure.

Acknowledging the dynamic nature of organ transplantation, the THOA implemented modifications to strengthen its regulatory structure. The THOA (Amendment) of 1995 increased the scope of the laws. The clear ban on the acquisition and sale of human organs was a significant provision that strengthened the moral underpinnings of organ transplantation. The amendment also created an authoritative body tasked with supervising and regulating these processes and required a comprehensive registration system for

institutions licensed to perform organ transplants.<sup>3</sup>

Another major modification was added in 2011, carrying on the legislative route. This time, the goal was to increase organ donation awareness in India. An essential first step in establishing a more structured and effective organ donation procedure was the amendment's need for the establishment of a national register of donors and recipients.

The THOA (Amendment) had additional amendments in 2014. This amendment, which mandates that hospitals possessing critical care units and the ability to handle brain-dead patients have a designated transplant coordinator, acknowledged the significance of cooperation in the organ donation procedure. Concurrently, the National Organ and Tissue Transplant Organization (NOTTO) was established under the legislation with the particular aim of organizing and optimizing organ donation initiatives throughout the nation.<sup>4</sup>

Since its establishment in 2014, NOTTO has been a key player in the organ donation scene in India.<sup>5</sup> This agency is in charge of organizing and expediting the whole organ donation procedure, which includes keeping an extensive national register of donors and recipients up to date. In addition to its regulatory responsibilities, NOTTO regularly participates in public awareness efforts, which is vital in promoting the nation's organ donation culture. By using a multipronged

<sup>2</sup> *Id.*

<sup>3</sup> *Navigating the Legal and Policy Landscape of Organ Donation in India: A Comprehensive Guide.* (2023, May 12). Jus Corpus. Retrieved December 25, 2023, from <https://www.juscorpus.com/navigating-the-legal-and-policy-landscape-of-organ-donation-in-india-a-comprehensive-guide/>.

<sup>4</sup> Vijayakumar, Preethika. (2022). Organ transplantation in india would an opt-out system of organ donation be effective?. *Jus Corpus Law Journal*, 3(1), 59-66.

<sup>5</sup> *Id.*



strategy, NOTTO has been instrumental in establishing and improving India's organ donation laws, promoting moral behaviour and public awareness.

### **Religious Perspectives on Organ Donation**

#### ***Hinduism***

As one of the oldest faiths in the world, Hinduism has a rich historical background that greatly shapes its views on the admirable practice of organ donation. Going back in time, the origins of organ donation may be found in the ancient Indian texts, where charitable activities, such as donating one's body parts for the benefit of others, were highly valued as moral virtues. It emphasizes the strong moral and cultural underpinnings of Hinduism, bolstering the idea of selfless giving for the benefit of all people.

Hindu philosophy is complex and holds that the body is only a transitory home for the eternal soul, or Atman, and not a permanent vessel. It is revered as a holy gift with significance that goes beyond personal experience. The firmly held belief in reincarnation emphasizes the soul's eternal journey through several bodies. This deep philosophical insight cultivates a nuanced view of the human body and opens people's minds to the idea of organ donation as a kind way to support one another on their journey through life.<sup>6</sup>

Still, there is a range of reactions to organ donation among people and groups in Hinduism, even though the religion generally endorses kindness and generosity. This variation is explained by the many ways that

religious scriptures are interpreted as well as the subtle cultural differences that exist among Hindus. Some may be hesitant because they feel that organ donation violates the Hindu concept of seva, or selfless service, while others contend that organ donation is in line with these beliefs.<sup>7</sup> It becomes necessary to navigate and understand these divergent viewpoints in order to promote a wider acceptance of organ donation within the Hindu community.

#### ***Islam***

In the context of Islam, the idea of organ donation is deeply entwined with Shariah values, which emphasize kindness, generosity, and the value of life preservation. The sanctity of life, which serves as the foundation for the promotion of charitable and kind deeds, is fundamental to Islamic beliefs. This perspective sees organ transplantation as a way to bring these ideas to life on a physical plane. Reputable Islamic scholars, whose interpretations of Shariah are respected in the Muslim world, have issued a number of fatwas, or legal rulings, concerning organ donation. In general, these fatwas seem to encourage the practice within the moral parameters established by Shariah. The idea of informed consent is a key component stressed in these viewpoints, guaranteeing that the donor gives their assent voluntarily and without fear of harm. It is important to remember that different scholars may have different interpretations, and that continuing discussions within the Islamic scholarly community help to create a complex and ever-evolving understanding of

<sup>6</sup> Trivedi, Deepanshi. (2019). Organ Donation: Chance to Live Posthumously, Legal Issues Involved. *Supremo Amicus*, 11, 147-151.

<sup>7</sup> Jain, Sakshi. (2022). Donation of Organs in India after Death. *Indian Journal of Law and Legal Research*, 4, 1-18.



organ donation in the framework of Islamic ethics.<sup>8</sup>

Muslim communities across the world have a variety of viewpoints about organ donation. Several nations with a majority of Muslims have taken action to create ethical and legal frameworks that control organ donation in an effort to balance religious beliefs with scientific advancements. These frameworks frequently aim to reconcile the need to preserve the dignity of the departed with the necessity of saving lives. Moreover, the promotion of knowledge and acceptance of organ donation within Muslim populations is greatly aided by grassroots projects and community education. These programs work to dispel myths and foster a more comprehensive comprehension of the moral issues related to organ donation, bringing medical progress into line with the strongly held principles of kindness and charity found in Islamic teachings.

### ***Christianity***

The sanctity of life and the moral duty to love and care for others are central to Christian theology, which informs the religion's position on organ donation. The general Christian teaching of altruism is firmly aligned with the idea of organ donation as a model act of unselfish love and compassion, even though the details of teachings may differ throughout faiths. Different viewpoints on organ donation surface throughout the heterogeneous Christian denominational landscape. Organ transplantation is generally

accepted by mainstream religions as a practical way to prolong and improve human life. A more favourable view of organ donation is made possible by the religious focus on the resurrection and the eternal nature of the soul, which promote the idea that the human body is only a temporary vessel.<sup>9</sup>

Diverse Christian beliefs about the afterlife give birth to different understandings of the body's participation in the resurrection. However, Christians are encouraged to view organ donation as an outgrowth of their core beliefs because of the compassion and generosity that permeate all of Christianity's teachings. Being willing to give one's organs is frequently viewed as an expression of Christian principles and a dedication to helping others. The Christian faith's diverse views on the hereafter do not prevent the general support of organ donation. Rather, the focus on charity and love acts as a uniting factor, encouraging many Christians to see organ donation as a compassionate and morally righteous act. This viewpoint, which promotes a wider acceptance of organ donation as a morally righteous and spiritually linked deed, is fostered through interfaith conversations and educational programs within Christian communities.

### **Data Analysis as to Empirical Research**

In lieu of conducting the empirical research with the aim of grasping the opinion of the people from the different age group, researcher has prepared the questionnaire and

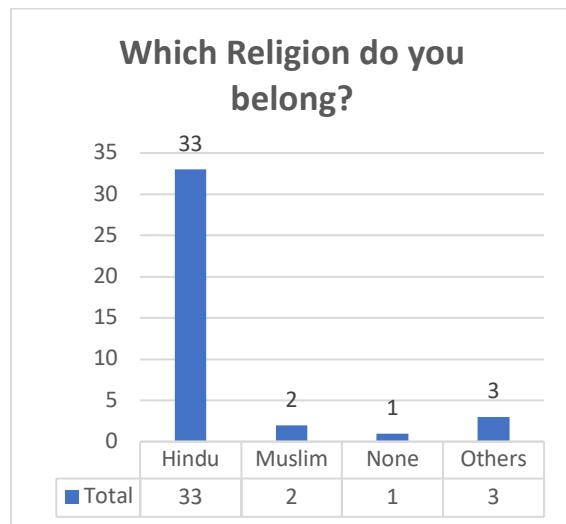
<sup>8</sup> Ghaly, Mohammed. (2012). Religio-ethical discussions on organ donation among muslims in europe: an example of transnational islamic bioethics. *Medicine, Health Care and Philosophy*, 15(2), 207-220.

<sup>9</sup> *Christianity and Organ Donation*. (2021, December 8). Donor Alliance. Retrieved December 25, 2023, from <https://www.donoralliance.org/christianity-and-organ-donation/>.



took the sample of 50 peoples, only 39 were helpful for the researcher.

When the people were asked about their religion, out of people, most of the people belongs to the Hindu religion, few are Muslims, remaining belongs to other religions, as depicted in Graph 1 below.



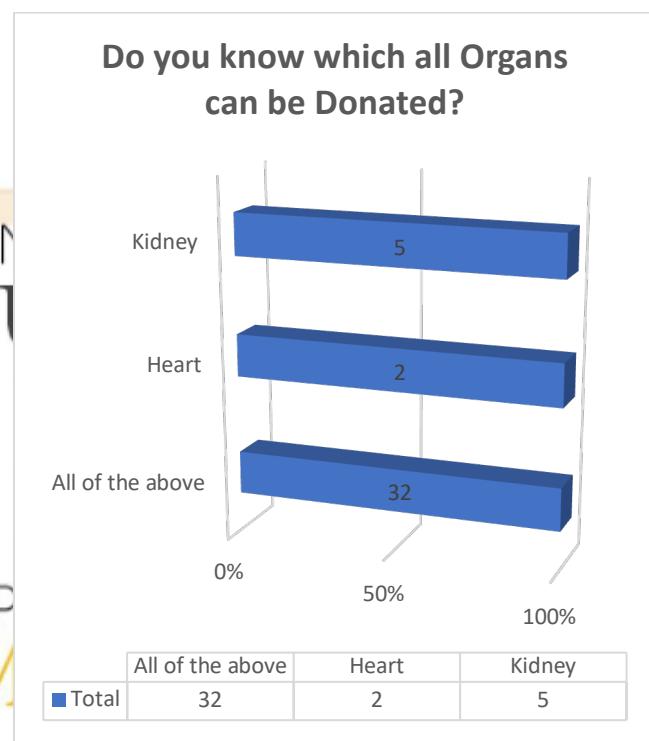
Graph 1

When those 39 people were asked about whether they are known to the concept and facets of the organ donation, all of them, i.e. 100% people said yes pertaining to the same, as depicted in Graph 2 below.



Graph 2

Moreover, when those 39 people had been given with the option pertaining to the query about the organ which can be donated, 5 of them chose kidney, 2 of them said heart, while most, i.e. 32 people picked both as the organ which can be donated, as depicted in Graph 3 below.



Graph 3



Lastly, when they had been asked that whether they could be willing to donate their organs, if their respective religion does not allow them regarding the same, 37 out of 39 were agreed while 2 out of 39 people denied for the same, which have been depicted in Graph 4 below.

### Would you be willing to Donate your Organs, even if Your Religion does not Allow?



Graph 4

### Impact of India's MOHAN Foundation

Of the 1,300 dead organ transplants performed in India over the past 14 years, 400 have been made possible thanks in large part to the efforts of the Tamil Nadu and Andhra Pradesh-based MOHAN Foundation organisation. The MOHAN Foundation was founded in 1997 and uses technology to encourage the donation of dead organs. With more than 5,000 pages of useful material, the foundation's Encyclopaedia of Organ Donation in India was produced using a

strong web platform. The website, which receives around 1,200 page views per day, also has a novel online donor registration with 25,000 registered users as of right now.<sup>10</sup>

The state governments of Tamil Nadu, Kerala, and Rajasthan have embraced the online organ donor and recipient registries that were developed and implemented by the MOHAN Foundation. The goal of the IT application is to guarantee fair organ allocation by offering a practical, approachable, and patient-centred solution.

The co-founder of the MOHAN Foundation, Lalitha Raghuram, has led the way in promoting organ donation. The 'Hospital Cornea Retrieval Program,' one of her major efforts, has led to a large increase in cornea usage. With around 600 organ donations made nationwide in 2022, the MOHAN Foundation, which is led by her, is the biggest organ donation organization in India. The MOHAN Foundation works in four main areas: educating the public, educating medical professionals, organizing the organ donation procedure, and making sure bereavement counselling is provided on time. The state governments of Tamil Nadu, Kerala, and Rajasthan have embraced the online organ donor and recipient registries that were developed and implemented by the MOHAN Foundation. The goal of the IT application is to guarantee fair organ allocation by offering a practical, approachable, and patient-centred solution.<sup>11</sup> The co-founder of the MOHAN Foundation, Lalitha Raghuram, has led the way in promoting organ donation. The 'Hospital

<sup>10</sup> Setia, Riya. (2020). Transplantation and Donation A New Hope for Life Yet Unvoiced in India. *Supremo Amicus*, 20, 478-486.

<sup>11</sup> *Id.*



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### **International Perspective as to the Organ Donation**

#### **USA**

The organ donation scene in the USA is characterized by a complicated regulatory framework in addition to an urgent demand. The demand for life-saving organ transplants is significantly higher than the supply, with 114,000 patients on the national waiting list and one new patient added every ten minutes. Sadly, the lack of accessible organs causes 20 people to pass away every day on average. The foundation of state-to-state consistency in organ donation laws is the Uniform Anatomical Gift Act (UAGA). It is based on model law created by the Uniform Commissioners and strikes a careful balance between the need for national uniformity and state-reserved authority. Under the UAGA, a gift may be made by an individual prior to death or approved posthumously by a surrogate. First-person authorization relies heavily on donor registries, of which as of January 2018 there were over 142 million registered donors. Once registered, the choice

to donate at the moment of death is legally established, and objections from family members cannot overrule it. The donation rate, the proportion of actual donors over eligible donors, exceeds 75% even with a 54% donor registration rate. The changing landscape of eligibility, driven by severe need and medical advancements, continues to be a topic of national discussion.<sup>12</sup> The UAGA's adaptability allows for changes in approved, neutral, and refusal stances, highlighting the need of upholding individual liberty during the decision-making process over donations.

#### **UK**

In the UK, there was a increase by 5% in the organ donor and transplantation in 2022-2023, representing a 62% consent rate. The Organ Donation Taskforce established a nationwide framework with an emphasis on integrating donation into end-of-life care after seeing the need for improvement. The UK has difficulties despite a rise in live donations, such as differences in the status of minority ethnic groups and restrictions on the availability of artificial organs. The Directorate for Organ Donation and Transplantation was integrated into NHS Blood and Transplant (NHS BT) in 2008.<sup>13</sup> It took on duties, launched a national organ retrieval program, and assisted hospitals in setting up local committees, coordinators for donors, and advocates to promote organ donation. Just 30% of people register, and family approval is barely 60% in spite of the 90% popular acceptance for donation. In an effort to raise consent rates to 85%, the

<sup>12</sup> David Orentlicher, *Presumed Consent to Organ Donation: Its Rise and Fall in the United States*, 61 Rutgers L. Rev. 295 (2009).

<sup>13</sup> *Organ donation in the United Kingdom*. (2023, December 19). Statista. Retrieved December 25, 2023, from <https://www.statista.com/topics/3130/organ-donation-in-the-united-kingdom/>.



Taskforce is examining ways to include the public, amend laws, and alter family dynamics while being wary of implementing an opt-out system. Given the low rate of brain-stem mortality in the UK, donation at emergency departments needs to be investigated. Facilities constraints and personnel unfamiliarity are challenges that need the creation of multidisciplinary guidelines for coordinated donation assistance.

### Australia

There is an acute organ transplant shortage in Australia; some 1,400 people are waiting for life-saving surgery. The fact that 69% of Australians say they would be prepared to give their organs and tissues when they pass away is a plus. Remarkably, 90% of families approve donation when the dead was a registered donor, above the 64% national norm. The “Human Tissue Act” and the Australian Organ Donor Registry, which is the only registry in the country for documenting donor choices, regulate the procedure.<sup>14</sup> 18 years of age and above can register, while 16 and 17-year-olds can still indicate their intention. In the case of those under 18, family approval is essential. Australia has an “opt-in” consent model, as opposed to other nations whose models are “opt-out.” The moral underpinnings of organ donation include compassion, respect for the deceased’s desires, and human dignity. The organs that are donated most frequently are kidneys, which are followed by the liver, lungs, and heart as well as tissues like heart valves and corneas. The legislative

framework carefully defines the requirements for donation, including the Human Tissue Acts and Ethical Practice Guidelines. The donation procedure is initiated by death, which is characterized as the irreversible end of brain or circulatory function. The fact that just 2-3% of hospital fatalities satisfy donation requirements highlights how selective the procedure is.<sup>15</sup>

### Conclusion and The Way Forward

Examining the complex relationship that exists between Indian legal frameworks and religious beliefs around organ donation makes it clear that a sophisticated understanding is necessary to promote a donation culture that values different points of view. The THOA, 1994 provides the framework legally, but its effectiveness depends on striking a careful balance with religious beliefs. We have looked at the complex web of beliefs influencing organ donation, from the many interpretations found in Hinduism, which emphasizes the purity of the body, to the subtle ideas found in Islam and Christianity about the soul and the afterlife.

It is critical to emphasize the necessity of a cooperative strategy that reconciles legal requirements with religious beliefs. Our approach should be based on a synthesis that respects the sanctity of life and the teachings of all faiths, rather than examining these issues separately. This harmonic viewpoint recognizes the value of personal convictions while keeping in mind the main objective of organ donation, the saving of lives. Achieving this equilibrium is not only

<sup>14</sup> Michael Speranza, *The Ethics and Utility of Organ Donation: Should We Be Using Anencephalic Infants*, 1995 UCL Jurisprudence Rev. 172 (1995).

<sup>15</sup> Smith, Hunter Jackson. (2016). The ethical implications and religious significance of organ transplantation payment systems. *Medicine, Health Care and Philosophy*, 19(1), 33-44.



morally right but also essential to the long-term development of organ transplantation in a nation with as much diversity as India.

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