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Bangladesh Perspective

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Declaration

I, Wahida Salim, with student ID 2019-1-66-014, declare that I am the author of the dissertation “Problems and Prospects of Human Organ Transplantation Act 1999: Bangladesh Perspective” This is my original work, and all sources of information used in this paper have been properly cited. This work has not been published in any journal, newspaper, or article.

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ABSTRACT

Human Organ Transplantation is a dire need worldwide due to increased human health threats. It is also one of the major developments in the 21st century of medical sciences. Organ transplantation is a life-saving process for people suffering from organ failures, and organ donation and transplantation can also be a new hope for dying patients. In every country, Human Organ Transplantation Acts serve divergent people. Bangladesh is no exception. Although the demand for Organ transplantation is skyrocketing, there is a substantial shortage of organs available for transplantation in Bangladesh. Besides, the Bangladesh government promulgated the Bangladesh Organ Donation Act 1999. It amended it in 2018, restricting donors and recipients to extended family members, reducing the donor pool. The aforementioned concern made it imperative to conduct a study on the organ transplantation act. This study examines Bangladesh's existing organ donation legislation and identifies gaps in donation and transplantation rights. This study has also provided recommendations for the issue, which can be foundational work for policymakers.

Chapter 1

Introduction

1.1 Background of the Study

The Human Organ Transplantation Act 1999 was enacted in Bangladesh to regulate organ transplantation and prevent organ trafficking. However, the law's implementation has been fraught with challenges, including a shortage of organs for transplantation, a lack of capacity among healthcare providers, and ethical concerns surrounding organ donation and transplantation. Therefore, there is a need to investigate the problems and prospects of the Human Organ Transplantation Act 1999 in Bangladesh from a legal perspective. This research is crucial because organ transplantation can save millions of lives and improve their quality of life. Yet, organ donation without control can lead to exploitation and threaten a person's right to life. Hence, safe and ethical organ transplantation and donor and recipient rights must be respected. This research will also advance organ transplantation and healthcare regulation scholarship. The research will shed light on developing country organ transplantation regulations and add to the organ donation and transplantation discussion.

The research will identify the challenges faced in implementing the law and provide recommendations for improving its implementation. The research will also provide insights into the law's impact on organ donation and transplantation in Bangladesh and identify potential solutions to the challenges faced. Overall, the research on the problems and prospects of the Human Organ Transplantation Act 1999 in Bangladesh is essential for ensuring organ transplantation's safety and ethical conduct in the country.

1.2 Hypothesis

The existing legal framework of Bangladesh is insufficient to ensure the safety and legality of conducting organ transplantation due to the shortcomings in the existing legal framework.

1.3 Research Question

The study's primary research question is as follows:

- What are the problems and prospects of the Human Organ Transplantation Act 1999 from the perspective of Bangladesh and Recommendations for improved legislation?

The primary research question encompasses the following subsidiary research question:

- What are the perceptions of healthcare professionals, organ donors, recipients, and representatives from civil society organizations on implementing the Human Organ Transplantation Act 1999?

1.4 Research Objectives

The broader objective of the study is to inspect the adequacy of the existing legal framework on organ transplantation. The specific objectives are as follows:

1. To examine Bangladesh's existing organ transplantation legislation;
2. To identify the shortcomings and challenges in the existing legal framework;
3. To find out the best possible solutions for Bangladesh;
4. To make a comparative study with practices in different jurisdictions.

1.5 Literature Review

The Human Organ Transplantation Act 1999 is a landmark legislation in Bangladesh that aims to regulate organ transplantation and prevent organ trafficking. However, the law's implementation has faced numerous challenges, and its impact on organ transplantation practices in Bangladesh is unclear. This literature review examines the existing literature on the problems and prospects of the Human Organ Transplantation Act 1999 from a Bangladesh perspective.

One of the primary challenges of the Human Organ Transplantation Act 1999 is its inadequate enforcement. A study by Md Shaikh Farid and Tahrima Binta Naim Mou on “Religious, Cultural and Legal Barriers to Organ Donation: The Case of Bangladesh” found a substantial shortage of organs available for transplantation in Bangladesh. This has led to the monetization of organs and Bangladesh's legal, cultural, and religious obstacles to organ donation. According to the authors, the main barriers to organ donation in Bangladesh include other cultural and legal difficulties and the opposition to organ donation held by Muslim conventional religious leaders. Md Sanwar Siraj, in “Living Organ Donation for Transplantation in Bangladesh: Reality and Problems,” uncovered that the lack of organ donors in Bangladesh is mostly a result of the country's family-oriented organ transplantation policy and practice, which exclusively allows relatives to donate organs. A study, “Organ Donation and Transplant: The Islamic Perspective,” found that the shortage of donor organs in Bangladesh is primarily due to cultural and religious beliefs that discourage organ donation. The authors recommend that the government and civil society organizations increase

public education and awareness campaigns to encourage organ donation and dispel misconceptions. The literature on the problems and prospects of Bangladesh's Human Organ Transplantation Act 1999 highlights the enforcement challenges. Also, it identifies prospects for the law to promote the practice of organ transplantation in accordance with the law.

1.6 Research Methodology:

This research will use a qualitative methodology to investigate the problems and prospects of the Bangladesh Human Organ Transplantation Act 1999. Qualitative research is suitable for this study as it allows for an in-depth exploration of the experiences, perspectives, and beliefs of the participants regarding the challenges and prospects of the law. Besides, data will be collected by reviewing relevant literature, including academic articles, books, reports, and legal documents. The literature review will provide a background and inform the research questions.

1.7 Scope of the Study

The study focuses on the sufficiency of the legal framework for organ transplantation. The research examines Bangladesh's existing organ transplantation legislation and determines challenges in these provisions. The study attempts to find out the problems in the legislation and the best possible solutions for Bangladesh by analyzing the case laws and practices in other jurisdictions. The study excludes the socio-economic and technical aspects of the issue due to limited knowledge in the field.

1.8 Limitations

Lack of time, absence of recent data, the unwillingness of the stakeholders to share information, and lack of access to online materials are the study's limitations.

Chapter 2

Conceptual Understanding of Human Organ Transplantation

2.1 Introduction

Organ Transplantation is a life-saving medical intervention involving transferring organs or tissues from a donor to a recipient.¹ However, organ transplantation's ethical and legal complexities have long been debated. In Bangladesh, the Human Organ Transplantation Act of 1999 was enacted to regulate organ transplantation and prevent organ trafficking. The Act prohibits commercial organ transplantation and requires organ donation and transplantation to be done voluntarily and with the donor's informed consent.

This chapter provides an overview of organ transplantation, legal and ethical issues in organ transplantation, and the Human Organ Transplantation Act 1999 from the Bangladesh perspective. Additionally, the research paper provides an overview of organ transplantation, including the history of the practice, different types of organ transplantation, and the challenges associated with organ transplantation. It discusses the legal and ethical issues surrounding organ transplantation, including organ donation, consent, and equity in organ allocation.

2.2 Overview of Human Organ Transplantation

Human organ transplantation is a complex medical intervention that involves the replacement of a failing organ or tissue in the body with a healthy one. The procedure can be a life-saving treatment for patients suffering from organ failure or tissue damage caused by disease, injury, or congenital conditions.² The history of human organ transplantation dates back to the early 20th century when the first successful kidney transplantation was performed in 1954 by Dr. Joseph E. Murray.³ Since then, advances in medical technology and immunosuppressive therapies have greatly improved the success rates of organ transplantation.

Organ transplantation can be performed using organs from either living or deceased donors.⁴ Despite the potential benefits of organ transplantation, the practice is not without challenges. The

¹ Josep M. Grinyó, “*Why Is Organ Transplantation Clinically Important?*”, *Cold Spring Harb Perspect Med* v.3(6); (June 2013), < <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3662355/> > Accessed 15 March 2023

² Kristen D. Nordham and Scott Ninokawa, “*The history of organ transplantation*”, *BUMC*, 2022; 35(1): 124–128 < <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8682823/> > Accessed 15 March, 2023

³ *ibid*

⁴ Rafael Beyar, “Challenges in Organ Transplantation”, *Rambam Maimonides Med J* v.2(2) (2011 Apr 30) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3678939/>> Accessed 15 March, 2023

demand for organs far exceeds the supply, resulting in long waiting lists for patients needing transplants while there is a shortage of organs. Furthermore, in addition to medical challenges, there are ethical and legal issues associated with organ transplantation.⁵

Generally, human organ transplantation is a complex and multifaceted practice that presents both opportunities and challenges. While the procedure can be a life-saving intervention for needy patients, it raises ethical, legal, and medical questions requiring careful consideration and regulation.⁶ In Bangladesh, the Human Organ Transplantation Act of 1999 was enacted to regulate organ transplantation and prevent organ trafficking. However, implementing the law has faced several challenges, which will be explored in further detail in this study.

2.3 The Legality of Human Organ Transplantation

Organ transplantation is a complex medical procedure that raises several medical, legal, and ethical issues in Bangladesh and worldwide. These issues include questions of consent, equity in organ allocation, and the prevention of organ trafficking and exploitation.

One major issue is the question of consent. Organ donation and transplantation must be done voluntarily and with the donor's informed consent. However, obtaining consent can be challenging, especially in cases where the donor is a minor, deceased, or deceased minor, and the donor's family decides to donate.⁷ Often, families may be reluctant to donate their loved one's organs due to cultural or religious beliefs. Besides, in Bangladesh, this is further complicated by the lack of awareness about organ donation and transplantation and the social stigma surrounding organ donation.⁸

Moreover, the allocation of organs must be fair and based on medical needs. Still, there are often disparities in access to organs based on socioeconomic status, race, and geography. This leads to debates about the allocation system and calls for more transparency and accountability. To address these issues, some countries have implemented systems of organ allocation based on objective

⁵ ibid

⁶ Beyar (n-4)

⁷ Jerome F. Leavell, "*Legal Problems in Organ Transplants*", (1973)

<<https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2665&context=facpubs>>
Accessed 15 March, 2023

⁸ ibid

medical criteria.⁹ In contrast, others have adopted policies prioritizing certain groups, such as children or those with the greatest need.

In addition, one of the major rising legal issues is organ trafficking and exploitation. The sale of organs is illegal in many countries, including Bangladesh, but the organ demand has led to a thriving black market in some regions. This has led to the exploitation of vulnerable populations, such as the poor or marginalized, who may be coerced into donating their organs for financial gain. In Bangladesh, the Human Organ Transplantation Act of 1999 prohibits commercial organ transplantation and sets penalties for those engaged in organ trafficking.¹⁰

In Tebaria, Tangail District Bangladesh, the 6-year-old Harun-ur-Rashid's body was found in wetlands close to Sirajganj, north of Bangladesh's capital Dhaka, five days after his abduction. The child's kidneys were removed as a result of the nation's illegal organ trafficking. Tebaria's residents endure the abject poverty of rural Bangladesh and live in constant danger of neighborhood banditry.¹¹ Some cited the description of lawlessness, which was accentuated by inefficient and dishonest local authorities, and claimed that 15 local children had been killed similarly to Harun in the previous year. For the kidnapping, three local men were detained, but there was still no word of any search for the Dhaka syndicate members. Hannan said that as a laborer he was unable to pursue a criminal case due to his inability to pay for a lawyer and the time away from work.¹²

Overall, legal and ethical issues in organ transplantation are complex and multifaceted and require careful consideration and regulation to ensure the safety and well-being of all involved.

2.4 The Human Organ Transplantation Act 1999: Bangladesh Perspective

The Human Organ Transplantation Act 1999 is a law enacted in Bangladesh that regulates the transplantation of human organs. On April 13, 1999, Bangladesh's Human Organ Transplantation Act was enacted, enabling live and brain-dead donors to donate organs. The Parliament altered the

⁹ Etheredge HR, "Assessing Global Organ Donation Policies: Opt-in vs Opt-Out" (Risk Management and Healthcare Policy, 2021) Volume 14, pg- 1985–1998, Accessed 15 March 2023,

¹⁰ Tahmidur Rahman Remura, "Organ Donation Law in Bangladesh" TLS, < <https://tahmidurrahman.com/organ-donation-law-in-bangladesh/#:~:text=The%20Human%20Organ%20Transplantation%20Act,transplants%20from%20living%2Drelated%20donors.>> Accessed 17 March, 2023

¹¹ Nigel O'Connor, "Bangladesh organ trade continues unabated, targeting children, the poor", (ALJAZEERA America, December 26, 2014) < <http://america.aljazeera.com/articles/2014/12/26/bangladesh-organtrafficking.html> > Accessed 17 March 2023

¹² *ibid*

Act on January 8, 2018, and the amendments became effective on January 28.¹³ The law was created to address issues of organ trafficking and exploitation and to promote ethical and safe organ donation and transplantation practices in the country. The act outlines the legal framework for organ transplantation in Bangladesh, including provisions for registering and regulating hospitals and medical professionals involved in the transplantation process. The law also defines the conditions under which organ transplantation is permissible, including the requirement for informed consent from both the donor and recipient.¹⁴

Under the Human Organ Transplantation Act 1999, commercial organ transplantation is prohibited. This means that the buying and selling organs is illegal in Bangladesh, and penalties are imposed on those who engage in such activities. The law also provides for establishing a National Committee for Organ Transplantation, which oversees the regulation of organ transplantation in the country. The law also outlines the conditions under which organ donation may be permitted, including the requirement for the transplantation process. In addition, the law prohibits the transplantation of organs from minors or mentally disabled individuals unless there is explicit consent from a legal guardian or authorized representative.¹⁵

Despite the existence of the Human Organ Transplantation Act 1999, there are still challenges in implementing the law effectively in Bangladesh. One of the main challenges is the lack of awareness and understanding of the law among the general population, medical professionals, and healthcare providers,¹⁶ as well as the shortage of organs available for transplantation in the country.¹⁷ This can lead to difficulties obtaining informed consent and challenges in identifying and preventing illegal organ trafficking.

While the issues faced by Bangladesh are similar to those faced by other countries, the country's unique cultural and social context presents its own challenges. Besides, to address this issue, the government of Bangladesh has launched public awareness campaigns to promote organ donation

¹³ Md. Sanwar Siraj, “*The Human Organ Transplantation Act in Bangladesh: Towards Proper Family-Based Ethics and Law*” (Asian Bioethics Review, 2021) < <https://pubmed.ncbi.nlm.nih.gov/33868489/> > Accessed 17 March, 2023

¹⁴ ibid

¹⁵ Siraj (n-13)

¹⁶ Ambagtsheer F, “*Understanding the Challenges to Investigating and Prosecuting Organ Trafficking: A Comparative Analysis of Two Cases*” (Trends in Organized Crime, 2021) < <https://link.springer.com/article/10.1007/s12117-021-09421-2> > Accessed 18 March, 2023

¹⁷ Saidi RF, Hejazii Kenari SK. “*Challenges of organ shortage for transplantation: solutions and opportunities*”, (Int J Organ Transplant Med, 2014) 5(3):87-96, Accessed 18 March, 2023

and transplantation. It has also established a national organ donation and transplantation program to increase the availability of organs for those in need.

2.5 Conclusion

The legal and ethical issues surrounding organ transplantation are complex and vary widely across different countries and regions. While some countries have robust legal frameworks to regulate organ transplantation, others face significant challenges in implementing and enforcing such laws. Bangladesh, for example, has the Human Organ Transplantation Act 1999, which aims to promote ethical and safe organ donation and transplantation practices in the country.¹⁸ However, challenges such as a lack of awareness and understanding of the law, and a shortage of organs for transplantation, continue to pose significant barriers to the effective implementation of the law in the country. However, organ transplantation's legal and ethical implications must be carefully considered and regulated to prevent exploitation and ensure equitable access to transplantation services.

¹⁸ Siraj (n-13)

Chapter 3

Judicial Decisions, Socio-Cultural Barriers, and Prospect of Organ Transplantation in Bangladesh

3.1 Introduction:

Organ donation is one of the major developments in medical sciences in the 21st century. Organ transplantation is a life-saving process for people suffering from organ failure.¹⁹ Although organ donation and transplantation can be a new hope for dying patients, there is a substantial shortage of organs available for transplantation in Bangladesh.²⁰ This has resulted in the commodification of organs and has impacted the practical outcome and consequences of Organ Transplantation in Bangladesh. To prevent illegal organ transplantation, the judiciary in Bangladesh has played a significant role in shaping the legal framework surrounding organ transplantation in the country. Judicial decisions have helped clarify the legal requirements and limitations surrounding organ transplantation and have contributed to developing a more robust legal framework in Bangladesh.²¹ The chapter will begin by exploring the judicial decisions and case laws related to organ transplantation in Bangladesh, including the legal framework governing organ transplantation, the application of such laws in practical situations, and the legal consequences of illegal organ trafficking and exploitation in the country and as well as the impact of social and economic factors on the availability of organs for transplantation. Finally, the chapter will discuss the problems and prospects of the Human Organ Transplantation Act 1999 in Bangladesh. This will include an examination of the challenges faced in implementing the law effectively and the potential opportunities for improving access to safe and ethical organ transplantation services in the country.

3.2 Case Law Analysis of the Practical Outcome and Consequences of Organ Transplantation in Bangladesh:

The Human Organ Transplantation Act in Bangladesh limits the way of transplantation of organs in the human body; due to this, many patients have suffered loss or lost their precious lives.

In a recent case *Fatema Zohora vs Bangladesh represented by the Secretary, Ministry*

¹⁹ Md Shaikh Farid, Tahrima Binta Naim Mou, “Religious, Cultural and Legal Barriers to Organ Donation: The Case of Bangladesh,” (Bangladesh Journal of Bioethics 2021); 12 (1): 1-13 Accessed 25 March 2023

²⁰ ibid

²¹ n-19

of Health and Family Welfare Affairs, Bangladesh Secretariat, Ramna, Dhaka and others, A girl named Fahmida, who has been undergoing dialysis for over two years, required another kidney transplant. To save the daughter's life, Fahmida's mother, Fatema Zohra, donated her a kidney in 2015, but it got damaged within a year.²² According to the Transplant of Human Organ Act (amendment) 2018, only a “near relative” can donate a kidney, or the kidney can be obtained from a brain-dead patient whose kin would agree.²³

Unfortunately, the 26-year-old has no “near relative” willing to donate the organ. In her case, a kidney from a dead patient was also not an option. She had to try to obtain a kidney from Black Market or get the transplant done in a foreign country. The law allows organ donation from a non-relative with either an emotional connection with the recipient or an altruistic motive.²⁴ On August 24, 2017, Fahmida's mother found no other way to save her daughter's life and filed a writ petition with the High Court challenging the provisions that limit donations. Although the law was amended last year, and more relatives can now donate their kidneys to a patient, the change will not bring any significant difference to the huge gap between the demand and supply of the organ in the country.²⁵

People's fundamental rights have been trampled in this way. Finding a suitable donor to save the person's life becomes challenging if a relative does not want to or cannot donate their organ to save the person's life. Finding a suitable donor is difficult, especially in a country like ours. As a result of this act's limitations and requirements, someone's life is in danger. Additionally, it pressures close relatives and binds them against their will in the name of the law.

3.3 Judicial Decision on the Applicability of Organ Transplantation in the Context of Bangladesh

The Act's overly restricted definition of donors in sections 2, 3, and 6 exacerbates the issue, directly contributing to many fatalities and promoting the already thriving illegal kidney trafficking in Bangladesh. Due to the limitations of the Act, many constitutional rights of a person

²² Tamanna Khan, Rezaul Haque, Mostafa Shabuj, “*Kidney Donation: Patients suffer for legal constraints*”, (The Daily Star, Dec 1, 2019) < <https://www.thedailystar.net/frontpage/patients-suffer-legal-constraints-kidney-donation-bangladesh-1834099> > Accessed 25 March, 2023

²³ *ibid*

²⁴ *ibid*

²⁵ Khan & Haque (n-22)

were violated.²⁶ No person shall be deprived of their life or their personal freedom other than in compliance with the law, according to Article 32²⁷ of the Constitution. According to Article 15(a)²⁸ it is the state's fundamental duty to provide for the basics of life, including health care.. Article 18²⁹ provides that it is the primary duty of the State to improve public health.³⁰ It has been nearly impossible to protect the rights of the people due to the narrow definition of donors.

However, on December 5, 2019, the bench amended the Transplantation of Human Organs (Amendment) Act 2018 within six months, allowing emotional kidney donation by close relatives or known persons. After ruling on a writ filed in 2017 by Fatema Zohra, the mother of a kidney patient, the bench announced its decision. Sections 2(C), 3, and 6 of the Organ Transplantation Act 1999, revised in 2018, were challenged as being illegal because they only permitted the donation of human organs to “near relatives.”³¹

3.4 Social, Cultural, and Religious Barriers to Organ Transplantation in the Context of Bangladesh:

Organ transplantation is a complex medical procedure that requires significant societal support and understanding to be successful. However, in Bangladesh, several social, cultural, and religious barriers to organ transplantation make it a difficult practice to promote and implement.

3.4.1 Social and Cultural Barriers

The shortage of organs for transplantation makes it essential to understand why some people are reluctant to donate their organs. There are a variety of reasons why individuals from various backgrounds are less likely to consent to organ donation. Among these causes, social and cultural difficulties are crucial, particularly in emerging and least-developed countries like Bangladesh.³²

²⁶ Barrister Tahmidur Rahman, “*Organ Donation Law in Bangladesh*”, TAHMIDUR REMURA LLP, (26th October 2022), < <https://tahmidurrahman.com/organ-donation-law-in-bangladesh/> > Accessed 25 March, 2023

²⁷ The Constitution of the People's Republic of Bangladesh, Article 32,

²⁸ The Constitution of the People's Republic of Bangladesh, Article 15(a)

²⁹ The Constitution of the People's Republic of Bangladesh, Article 18

³⁰ Rashna Imam, “*A judicial intervention had to be sought*”, (The Daily Star, Sep 12, 2017) < <https://www.thedailystar.net/law-our-rights/judicial-intervention-had-be-sought-1460995> > Accessed 25 March, 2023

³¹ M Moneruzzaman, “*High Court sets out guidelines for kidney transplantation*,” (New Age Bangladesh, Jan 31, 2020) < <https://www.newagebd.net/article/98194/high-court-sets-out-guidelines-for-kidney-transplantation> > Accessed 26 March, 2023

³² Farid & Mou (n-19)

Most people of Bangladesh don't want to give their organs after death because they want to be buried with their corpses whole. Additionally, as most individuals are ignorant of organ donation and worry that other organs would be damaged if they undergo surgery to recover an organ, they assume that if one person wants to give an organ, other organs will also be removed.³³ One of the leading social challenges in Bangladesh is the lack of information and education about organ transplantation. Many people in Bangladesh who have never had an organ transplant may approach the concept with suspicion or apprehension. There are also numerous false presumptions about the surgery, such as the idea that the donor won't survive the treatment or that it goes against one's religious beliefs.³⁴

Like many other countries, Bangladesh also experiences cultural difficulties regarding organ transplantation. Removing organs from the body after death is strongly frowned upon in many regions of the nation. Due to this beliefs deep cultural and theological roots, finding organs for transplantation can be difficult. Furthermore, some people may not be open to giving or receiving organs due to cultural beliefs that link body parts to spiritual essence.

3.4.2 Religious Barriers

In Bangladesh, religious restrictions can affect the transplantation of organs. Islam is the most common religion in Bangladesh, and some Muslims may consider organ transplantation against their religious beliefs.³⁵ The sanctity of the human body is violated by organ donation and transplantation, according to some Islamic scholars who have issued fatwas (religious rulings) in support of the practice.³⁶

Contrarily, Hinduism is in favor of organ transplantation and donation. In Hinduism, the idea of *daan*, or selfless deeds, has always been valued. Interestingly, Hindu mythology references Organ Donation. In general, Christianity is in favor of organ donation and transplantation. Most Anglican, Catholic, and Protestant scholars view organ donation as selfless. The donation and transplant of organs are therefore approved. There are various perspectives on organ donation among Buddhist

³³ Ibid

³⁴ Farid & Mou (n-19)

³⁵ Ali A and others, "*Organ Donation and Transplant: The Islamic Perspective*" (Clinical Transplantation, 2020) 34, Accessed 26 March, 2023

³⁶ *ibid*

thinkers. While some academics are against cadaveric donation, others leave it up to personal preference. In other words, Buddhism sees charitable giving as a personal decision.³⁷

In a nutshell, addressing the fundamental obstacles preventing organ transplantation in Bangladesh is critical. These obstacles are social, cultural, and religious. To raise public awareness and comprehension of the advantages of organ transplantation, it is crucial to interact with communities, educate people, and include religious leaders. By doing this, Bangladesh can overcome these obstacles and give better access to life-saving medical care to those in need.

3.5 Problems and Prospects of Human Organ Transplantation Act 1999 in Bangladesh:

The Human Organ Transplantation Act of 1999 is an essential legal framework in Bangladesh that regulates the transplantation of human organs. The law provides guidelines and procedures for the donation and transplantation of organs, ensuring that the process is carried out legally and ethically. However, despite this law, several challenges and opportunities exist in implementing organ transplantation in Bangladesh.³⁸

The distribution of organ transplants from living relatives raises ethical questions. As previously mentioned, in addition to the father and mother, adult son and daughter, adult brother and sister, adult husband and wife, and paternal and maternal uncle and aunt, Section 2:4 of the Act specifies numerous third-degree blood relations as prospective donors, including grandparents, grandchildren, and first cousins. Grandparents, grandkids, and first cousins are considered relatives in Bangladeshi society, predominately Muslim, but they are typically referred to as distant blood relations. It is doubtful that a distant relative might persuade someone to donate their organs to a family member in these circumstances.³⁹

The Act forbids accepting any financial incentives in return for organs or selling them. Selling and purchasing human organs means earning compensation for donating or agreeing to donate organs. However, society must offer donors free medical care and a set sum of money for their well-being. Considering Bangladesh's lack of healthcare coverage, paying the first cousin anything for post-operative care is forbidden. Providing a set payment for selfless gifts may aid in preserving them

³⁷ Farid and Mou (n-19)

³⁸ M Moneruzzaman (n-31)

³⁹ Siraj (n-13)

following transplantation. As a result, there will be an even greater supply of organs available from living donors.⁴⁰

The Act prohibits selling organs in advertisements, including classified ads in newspapers. Additionally, it outlaws any financial transactions involving the exchange of human organs and any other initiatives involving the sale of organs (Section 9).⁴¹ These restrain the public from being aware of organ donation transplantation.

Despite all the obstacles and shortcomings I've discussed in this chapter, the nation of Bangladesh experienced miracles when a 20-year-old girl called Saral Islam became the nation's first-ever organ donor. The country's physicians performed kidney and cornea transplants on four separate recipients, declaring it as 'brain dead'. Her selfless effort paved the way for countless individuals to start over and created history in Bangladesh.

3.6 Conclusion:

Although it may differ among cultures, the prioritizing policy in the organ allocation system does not have ethically offended Bangladesh's sense of justice. Increased organ donation for transplantation must be encouraged by public policy, as the advantages of doing so always outweigh the disadvantages. Moreover, the lack of public awareness and education, inadequate infrastructure and resources, and weak legal enforcement mechanisms are major challenges in implementing the law. Clear guidelines and protocols for the transplantation process are needed to ensure it is carried out safely and ethically. Besides, strict guidelines should be implemented, considering the importance of legal enforcement mechanisms to prevent illegal organ trafficking and corruption in the transplantation process.

⁴⁰ Ibid

⁴¹ ibid

Chapter 4

Organ Transplantation under National and International Legislative Framework

4.1 Introduction:

The practice of Human organ transplantation around the world may vary from state to state however, one thing is common, which is the uprising necessity of Human organ transplantation. Another common thing around the world is the lack of deceased donors. The unfulfilled need for these organ transplants raises many issues that countries worldwide try to eradicate with different laws.⁴² However, in recent years many political organizations, professional bodies, and the World Health Organization's efforts to eradicate complications regarding these sectors for developing the legal framework and maximizing organ donation from both the deceased and living donor can be seen.⁴³ The chapter will give an overview of the regional, national, and international standards for organ transplantation in Europe and Asia, as well as a legal analysis of the current state of organ donation and transplantation in those mentioned regions.

4.2 International Standard of Organ Transplantation

There are some guiding principles on Human Cell, Tissue, and Organ Transplantation given by the WHO (World Health Organization). The eleven principles are mainly there to ensure the acceptable, beneficiary, and efficient practice of transplantation.⁴⁴ Principle one states that the donation will be with free consent, without any compulsion, and with any monetary benefit. Principle two talks about the donation by prioritizing the donor's safety, Dignity, and right to privacy of the donors and the receiver of the organ. The Third principle is about the equity and transparency of organ donation. The fourth principle is said to be ensured the safety of the organ, cells, and tissues by utilizing safety-ensuring and processing standards. Principle fifth states that the transplantation process should be done by a professional person trained to do such a thing. They should be provided with the proper equipment and infrastructural support. The Sixth principle gives guidelines about the post care, where the donor and recipient of the organ will be

⁴² Rudge C, Matesanz R, and Delmonico FL, "International Practices of Organ Donation"(Academic.oup.com) <https://academic.oup.com/bja/article/108/suppl_1/i48/237865> accessed April 19, 2023

⁴³ *ibid*

⁴⁴ "Who Guiding Principles on Human Cell, Tissue, and Organ Transplantation" (*World Health Organization* January 1, 1970) <<https://apps.who.int/iris/handle/10665/341814>> Accessed April 20, 2023

under proper care and long-term follow-up. Principle seven guides us to properly respect the donor and recipients' religious and cultural beliefs. Principle eight talks about how there should be cooperation between the countries regarding organ, cell, and tissue transplantation, and cooperation should be encouraged. Principle nine states that there should be research and innovation regarding organ transplantation, and the research and innovation should be done prioritizing the well-being of the donor and recipient of the organ transplantation.⁴⁵ According to principle ten, the transplantation process should be under regular observation, and continuing quality improvement should be ensured. The eleventh and last principle of the World Health Organization talks about making a framework of both legal and regulatory which will be in conformity with ethical standards and which will help to ensure the prevention of illegal organ trafficking.⁴⁶

4.3 Application of Organ Transplantation in Europe

Europe has a well-established infrastructure and organ transplantation procedure. It has a long successful history of organ transplantation and is working to improve it step by step. Kidney transplantation is the most observed transplantation in Europe. Kidney disease is very common among people now, and kidney transplantation can change the physical condition of the sick person significantly. So the rate of kidney transplantation is higher than other types of transplantation.⁴⁷ This is because kidney treatment is so costly and is done in the long term. Kidney Transplantation can significantly change this condition and increase not only the life span of the person but also the health quality of the person who had kidney failure. The majority percentage of organ transplantation in Europe is kidney transplantation.⁴⁸ The second most observed organ transplantation in Europe is liver transplantation. To treat serious liver disease, livers are transplanted in Europe.⁴⁹ Though heart transplantation is not very common like kidney and liver transplantation, there is a significant application of heart transplantation in Europe. Hearts are normally transplanted to save lives by treating heart failure.⁵⁰ However, other organ transplantation applications in Europe exist, such as Lung transplantation, Pancreas

⁴⁵ *ibid*

⁴⁶ n-44

⁴⁷ “Supplemented Era-EDTA Registry Data Evaluated- Kidney International”, <[https://www.kidneyinternational.org/article/S0085-2538\(20\)31529-5/fulltext](https://www.kidneyinternational.org/article/S0085-2538(20)31529-5/fulltext) > accessed April 23, 2023,

⁴⁸ *ibid*

⁴⁹ European Liver Transplant Registry” (*ELTR*) <<https://www.eltr.org/>> accessed April 24, 2023

⁵⁰ (*European Society of Cardiology*) <<https://www.escardio.org/>> accessed April 24, 2023

transplantation, and Intestinal transplantation.⁵¹ They are not so common but critical and include complex and technically challenging procedures.⁵²

In England, unless specifically stated otherwise, consent to organ donation after death is assumed. By April 2020, a similar system might be in place in England. An opt-out organ donor registry, according to a 2018 study by Queen Mary University of London, won't stop family members from declining organ donation in the event that a deceased relative hasn't done so.⁵³ The current opt-in system in Germany, which consists of a donor card or, in the absence of a donor's decision, a decision by the donor's direct family, is expected to be replaced by a 'dual' opt-out system. Everyone will be automatically registered as a donor; consent can be revoked at any time, and family members can object to post-mortem donation.⁵⁴

The issue in England is that people must be openly given the option of donating or not to do so. This would eliminate ambiguity regarding one's desires. In Germany, it would mean a radical shift in paradigm: it would no longer be a question of voluntary organ donation, but of forced organ donation.⁵⁵

4.4 Application of Organ Transplantation in South Asia

The organ transplantation procedure is almost similar in every region; however, the application may differ because of legal framework or other ethical frameworks based on culture, religion, or other factors. In South Asia, the medical sector experiences a high rate of chronic disease among the people. There are many reasons behind this the main reason behind this is the lack of awareness of kidney care. So kidney diseases are very severe in this region. So the rate of kidney transplantation is higher than other organ transplants. However, most of the demand is unmet as there are insufficient donors. Due to this scarcity of donors, the patient attracts to illegal ways, and organ trafficking is causing higher rates.⁵⁶ Kidney and liver transplantation are commonly seen in South Asia other organ transplants are relatively lower in this area because of the high cost and

⁵¹ "Human Organ Transplantation in Europe:an Overview - EC.EUROPA.EU", <https://ec.europa.eu/health/ph_threats/human_substance/documents/organ_survey.pdf> accessed April 24, 2023

⁵² *ibid*

⁵³ Henriette Roscam Abbing, "Human Organs for Transplantation: Self-Sufficiency, a European Perspective", *European Journal of Health Law*, (24 Apr 2019) < https://brill.com/view/journals/ejhl/26/2/article-p87_1.xml?language=en > Accessed April 24, 2023

⁵⁴ *ibid*

⁵⁵ n-53

⁵⁶ "Chronic Kidney Disease in South Asia - The Lancet Global Health" <[https://www.thelancet.com/journals/langlo/article/PIIS2214-109X\(16\)30102-4/fulltext](https://www.thelancet.com/journals/langlo/article/PIIS2214-109X(16)30102-4/fulltext)> accessed April 24, 2023

critical medical procedures. In recent times the government of the countries of this region is taking initiatives to improve the quality, infrastructure, availability, and overall application of organ transplantation in this area.⁵⁷

In India, a patient's family members can visit a hospital on their own to donate an organ. A non-relative must notify the State Authorizing Committee if they wish to donate an organ. Within 24 hours, the Committee announces its final decision. Its decision is subject to appeal to the Central Authorizing Committee.⁵⁸ A healthy individual in Sri Lanka who is not a family of the patient may donate an organ with the approval of the Health Ministry's Ethical Committee.⁵⁹ Organ donation to non-relatives is prohibited in Myanmar, Singapore, Thailand, Nepal, and Singapore. The organ transplant statute in Nepal is now being revised to align with those in the USA and Iran. By submitting a document confirming the relationship between the donor and the receiver from their own country's home or foreign ministry, patients from other countries may use the organ transplantation procedure.⁶⁰

The Bangladeshi Organ Transplant Act was formulated in accordance with the Pakistani Act. Organ donation to a stranger is illegal in Pakistan. However, after receiving approval from the Human Organ Transplant Authority, it is possible to collect an organ from a living or deceased person if it cannot be obtained from a first degree relative. The National Monitoring Authority must be notified of any organ transplantations within 48 hours. A person who breaks the restrictions faces a 15 lakh rupee fine or a 10-year prison sentence.⁶¹

Similarly in Bangladesh, the government amended the law governing organ donation in 2018 to permit the transplantation of organs from brain-dead patients with their loved ones' permission. However, it took an additional five years to witness a posthumous organ donation. On January 18, 2023, Sarah Islam, a 20-year-old woman, donated her posthumous organs, making history. After her death, she became the first person in Bangladesh to donate two kidneys and a cornea. Four

⁵⁷ *ibid*

⁵⁸ Zafrullah Chowdhury and Touqeer Karim, “*Limitations and remedies of the amended human organs transplantation act*”, (The Business Standard, 05 December, 2019) < <https://www.tbsnews.net/opinion/limitations-and-remedies-amended-human-organs-transplantation-act> > Accessed April 24, 2023

⁵⁹ *Ibid*

⁶⁰ n-58

⁶¹ Chowdhury and Karim (n-58)

people—two without eyesight and two with severely damaged kidneys—have been granted new lives thanks to Sarah's bravery.⁶²

4.5 Conclusion

Organ transplantation in different regions and countries varies from each other not because of the legal framework only it also depends on other factors. Developing countries are not equipped with modern medical facilities for transplantation, so they cannot bear the expenses. On the other hand, in developed countries, people are more concerned about their health than in developing countries. So the application of the developed countries is much better than that of the developing countries. In recent times developing countries are trying to improve the situation and increase the application of organ transplantation.

⁶² IMAM HOSSAIN, “*Organ donation after death*”, (Financial Express, Feb 15, 2023), < <https://thefinancialexpress.com.bd/views/columns/organ-donation-after-death> > Accessed April 24, 2023

Chapter 5

Findings & Recommendations

5.1 Findings

By limiting the number of donors, the legislation on transplantation hinders the availability of organs for transplant. There can be no doubt that organ trafficking is a result of, and will continue to be a result of, the fact that there is a global shortage of donor organs accessible for transplantation. As a result, numerous related problems have emerged and are continuing continuously emerging in the country at large. The people are suffering the most as a result of the law enforcement forces' negligence in carrying out their tasks. Additionally, there is the involvement of private hospitals and clinics, where illegal and unauthorized transplants are performed. Organ transplantation is being approached by people in both legal and illicit methods. Organ brokers in Bangladesh encourage the common and poor to donate their organs. The majority of organ brokers' victims are the nation's poor. In exchange for donating their organs, the brokers give money to those in need. Rich people purchase organs from impoverished donors despite the Act's continued restrictions, and when no close relatives are found, they introduce them as such. Additionally, the majority of them frequently travel to nearby countries for transplants and medical care, which has a significant negative impact on Bangladesh's economy. Although the 1999 Act was updated in 2018, its scope remained constrained. Again, the current legal framework leaves unclear which circumstances may or may not exempt organ purchasers and recipients from criminal liability.

5.2 Recommendations

The following are recommendations for Bangladesh to take a number of next steps and initiatives to address the growing issues with organ transplantation, prevent organ trafficking, and possibly examine potential methods to increase the availability of transplantable organs:

1. A separate 'National Monitoring System' should be built to regularly reassess the Act's impact to maximize its legality in organ transplantation. The government should introduce a 'National Coordination Committee' comprising all concerned stakeholders to monitor organ donation and transplantation.

2. Bangladesh should work more rapidly and intensively to incorporate domestic legislation against organ trafficking into its legal system. The criminalization of trafficking offenses and the imposition of penalties (in both transplant legislation and penal codes) are other areas where national laws need to be harmonized. The nation should push the local competent authorities to keep a closer eye on this procedure. By emphasizing to the administrative bodies the value of prompt and thorough implementation of the pertinent legislation, the country's parliament should exert its authority of oversight over the administrative bodies.
3. Transplant facilities should also be prioritized in government hospitals, ensuring the constitutional right to life so that poor people can benefit from organ donation. Furthermore, subsidies for organ donors to ensure postoperative care and needy recipients for transplantation, establishing a central organ registration system, and introducing a “donor card” could be introduced.
4. There should be a comprehensive awareness program regarding the importance of organ donation. The government, non-government organizations, media, public representations, religious scholars, doctors, nurses, and all stakeholders should work together to make the awareness campaign successful. Introducing specialized education programs at the primary and secondary school levels is one strategy to raise public awareness and expand people’s knowledge of donation and transplantation. Giving knowledge about the potential risks of commercial transplants should be another strategy for stopping the trafficking in human organs.
5. The policymakers should provide proper guidelines for making organ transplants legally more flexible to the masses. The provisions regarding the Act should be informed to the organizations commencing the illegal organ transplant business. Moreover, proper surveillance should be implemented on the hospital authorities and other concerned authorities not to allow any kind of illegal transplant of organs.
6. The growing issue of human tissue and cell trafficking and commercialization is not yet adequately addressed by Bangladesh's legal system. Effective obstacles against requests to buy or sell human organs should be developed in accordance with the present organ transplantation regulations. Progress will be made through improved international law

enforcement cooperation and collaborative efforts to expand the supply of legally recovered organs for transplantation.

5.3 Conclusion

This study discovered numerous obstacles to the Act's proper implementation in Bangladesh. On January 8, 2018, the Parliament amended the Act to make it more appropriate and beneficial to make the transplantation Act successful. However, the old and revised acts still have many issues, which the paper attempted to address by examining the current state of the act, identifying its shortcomings, and making recommendations for its improved and successful application. Therefore, to ensure the success of organ donation and transplantation in Bangladesh, increased awareness and education of all authorities and bodies are required in all aspects of the organ transplant process.

Chapter 6

Conclusion

Transplantation of organs saves millions of lives worldwide. But the disparity between the demand for transplantable organs and the actual supply continues to be the main driver of human organ trafficking. The actual quantity of donated organs used for transplantation and the duration of the waiting lists vary greatly in Bangladesh. Therefore, efforts to stop and prevent organ trafficking should not only concentrate on enhancing law enforcement against traffickers but also on expanding the supply of organs. A variety of ethical questions about the distribution of accessible organs in organ shortage have recently been raised by recent advancements in organ transplantation.

The purpose of this paper is not to conduct an ethical study of the Act as a whole but rather to concentrate on issues relating to family members' preferred access to organs and to examine the obstacles that prevent organ donation and transplantation in Bangladesh. Increasing the number of donations from living relatives and the start of crucial organ donations from brain-dead donors is one of the main goals of incorporating incentives into the organ allocation system. Given that the modified Act permits individuals to give priority to family in getting their organs after death, a system of incentives centered around brain-dead donors would seem to be morally acceptable. To increase the donation rate of transplantable organs by moral means, the Act's effects must be periodically reevaluated.

The main issue explored in the paper is why Bangladesh does not receive enough organs for transplantation and what obstacles in the legal system are causing it. Some of the factors that are thought to be the most frequent obstacles to a successful living donor-recipient pair organ transplant include the rarity of a donor list in the provisions, the lack of medical resources, the lack of post-operative coverage for organ donors, religious misconceptions and public ignorance, and the incorrect perception of organs for transplantation. Overcoming these challenges will allow Bangladesh to create a viable living donor-recipient pair organ transplantation program that will guarantee better healthcare outcomes, encourage compassion and unity among Bangladeshi families, and safeguard the impoverished from having their organs sold to the highest bidder.

As Bangladesh cannot afford to fall behind in organ donation and transplantation, all concerned parties particularly the government, physicians, community leaders, and religious figures should

view organ donation and transplantation favorably and approach legal, cultural, and religious issues from a pro-life perspective. Furthermore, the biggest obstacles to organ donation in Bangladesh are not persons who do not wish to donate their organs, but rather a lack of tools to make it easier.

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