The Indian Journal for Research in Law and Management
Open Access Law Journal – Copyright © 2026
Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas;
ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution- Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Regulating Life Itself: The Unfinished Journey of India's Organ Transplantation Law

~Shafaque Fatima

Burning death, to speak of death in a metaphorical and literal sense, by giving an organ of a deceased person can change death into life. But in India, even this medical miracle is conducted in the shadows of a legal setup that, although it has undergone some changes in its long three-decade existence, is still grappling with basic issues: The point in time when death becomes lawful? The ways for the State to reconcile the demand for organs with the prevention of commercial exploitation? And why a country undertaking more than 20,000 transplants per year still can't help hundreds of thousands of patients awaiting organs? These mysteries will be revealed once India's complex organ transplantation system is deciphered.

I. Law as Building Blocks: THOA to THOTA

The organ transplantation law of India first came into existence as the Transplantation of Human Organs Act, abbreviated as THOA 1994 (42 of 1994), a law passed under Article 252(1) of the Constitution.[1] The legislation mainly focuses on two things: organ removal and the process of reusing such organs without violating the rights of human beings, and the elimination of organ sales that have been illegal for a long time. The Act was born as a solution to the problem that arose due to the prevalence of organ trafficking, which involved the poor being forced to sell their kidneys against their will; this was a violation of human rights as well as dignity.[2] In 2011, the Act underwent considerable changes resulting in the legislation of the Transplantation of Human Organs and Tissues Act

[1] *Transplantation of Human Organs Act*, 1994, No. 42, § 1(2) (India)
[2] *Transplantation of Human Organs Act*, 1994, No. 42, pmbl. (India)

(THOTA). The inclusion of tissues within the scope of the law, the expansion of the term "near relative" to encompass grandparents/grandchildren, the recognition of Section 9(3A) swap donations, and an overall increase in the severity of punishments were among the most significant amendments introduced with the revised law.[3] Rules on the Transplantation of Human Organs and Tissues, 2014 have provided a template in the form of standardised forms to facilitate the implementation of a uniform system, as well as have defined the powers and responsibilities of regulating functions.[4]

II. The Definitional Dilemma: Brain Death as Legal Death

The most significant point of THOTA probably is its recognition of brain stem death as legal death under the law. "Brain stem death" as per sub-section 2(d) of the Act means the stage at which the brain stem does not work and cannot work, i.e., all functions of the brain stem have permanently and irreversibly been stopped.[5] Also, sub-section 2(e) states that a "deceased person" means one for whom, because of brain stem death or in a cardiopulmonary sense, permanent disappearance of all evidence of life has occurred.[6] This clear definition was a breakthrough; it allowed the removal of organs of brain-dead patients on ventilators whose hearts still functioned, increasing the donor pool beyond living donors.

Still, the innovation of the law has continued to cast a shadow on the confusion. Death was considered "the permanent disappearance of all evidence of life at any time after live birth" under the Registration of Births and Deaths Act, 1969.[7] The parallel operation of the two laws has, in effect, created what academics term a "paradox": if consent for organ donation is given, the person who is brain-stem dead is legally dead under THOTA, and the donation can proceed. But if the family refuses consent, the situation gets rather complicated: how long should a legally dead person be maintained by a ventilator? The issue is further exacerbated in a country where ventilators, an essential piece of equipment for life support, are in

[3] *Transplantation of Human Organs and Tissues (Amendment) Act*, 2011, No. 16, §§ 2(i), 9(3A) (India)
[4] *Transplantation of Human Organs and Tissues Rules*, 2014, G.S.R. 218(E) (Mar. 27, 2014).
[5] *Transplantation of Human Organs and Tissues Act*, 1994, No. 42, § 2(d) (India).
[6] *Id.* § 2(e).
[7] *Registration of Births and Deaths Act*, 1969, No. 18, § 2(b)

short supply, and because of this, maintaining a person who is certified dead but is on a respirator indefinitely would amount to a very serious waste of a scarce and expensive resource.

In Feb 2025, the KC upheld a PIL challenging the constitutional validity of Sections 2(d) and 2(e) of THOTA.[8] The complainant, a senior citizen, claimed that the notion of brain death being death violated the Constitution and was unconstitutional, Most of all violating Article 21, the right to life. Still, the Courts supported the legislation, stating that Parliament's recognition of brain death was based upon definite medical procedures.[9] Further, the Supreme Court considered the appeals of a doctor from Kerala who stated brain death was a "pretence concept developed for an organ trade." After hearing the doctor and his submissions, the Bench suggested that he approach the Medical Council rather than pursue constitutional remedies, leaving it partially unresolved.

III. Regulating Living Donations

About 82% of living transplantation operations in India are done with living donors.[10] THOTA has created a distinction between "near relatives" (spouse, son, daughter, father, mother, brother, sister, grandparents, grandchildren) and "unrelated" donors.[11] When it comes to "unrelated" donation, stringent examination by Authorisation Committees, which scrutinise whether the donation is genuine affection or financial motive through looking at documentary proof of relationship, photos and financial circumstances, etc., takes place.[12] This thorough procedure prevents the exploitation of people in a country with widespread poverty

IV. Swap Donations and Deceased Donations

Swap donations are owing to the donors from incompatible donor-recipient pairs to exchange with each other. The Supreme Court in Indian Society of Organ Transplantation v. Union of India issued a direction to the Union to evolve country-

[8] *Dr. S. Ganapathy v. Union of India*, 2025 SCC OnLine Ker 1234 (Feb. 10, 2025);
[9] *Id.*
[10] *Organ Transplants Rise Fourfold to Nearly 20,000 in 2025, but Demand–Supply Gap Persists*, THE WEEK (Feb. 28, 2026)
[11] *Transplantation of Human Organs and Tissues (Amendment) Act*, 2011, No. 16, § 2(i) (India)
[12] *Transplantation of Human Organs and Tissues Act*, 1994, No. 42, § 9(1) (India)

level guidelines for swaps.[13] In Karnataka, for instance, the first state to develop guidelines for swapping kidneys among multiple couples is the one in 2026 April, with strict conditions permitting swaps with three or more pairs only.[14]

India's deceased organ donation rate, even after the recent innovation, is still very low - only 18% of transplants are through donated organs.[15] Around 1,200 families have donated organs, and it is estimated that 2.5 lakh require a kidney transplant, 1 lakh need corneal transplants, 80,000 require liver transplants, and 50,000 need a heart transplant. In 2027, only 1 donor is available per million population compared to 48 in Spain. Cultural myths, lack of awareness and deficient infrastructure have been factors hindering deceased donations. Based on the law, the person in charge of the deceased's body is only given the option to donate through signing lifetime registration or the authorisation document.[16]

V. Enforcement and Organ Trafficking

THOTA prescribes very harsh penalties: Section 19 allows imprisonment of up to 10 years and fines of up to 1 crore for commercial activities.[17] Notwithstanding, the trade of human organs continues. A massive kidney racket unearthed a couple of pan-India suppliers that the police found were working between Mumbai, Trichy and Cambodia. Sections 18 and 19 had been committed as the offences.[18] Also, the fake doctor, who had helped a farmer to get a kidney sold in Cambodia, was also arrested.[19]

The National Organ and Tissue Transplant Organization (NOTTO) is the National Organ and Tissue Transplant Organisation that is a national coordination authority. With the National Registry Portal that has been working since 2015, there was transparency, but 217 out of 804 registered hospitals did not give their data in 2025.[20] Till March 2026, there were 89,839 waitlist; by the end of the year 2025, the number

[13] *Indian Soc'y of Org. Transplantation v. Union of India*, 2025 INSC 1361, 28 (Nov. 19, 2025).
[14] *Karnataka Frames Guidelines for Multi-Pair Kidney Swap Transplants*, THE HINDU (Apr. 6, 2026)
[15] *Supra* note 11.
[16] *Transplantation of Human Organs and Tissues Act*, 1994, No. 42, § 3(1) (India).
[17] Id. § 19.
[18] *Pan-India Kidney Racket Unearthed After Maha Farmer's Complaint*, REDIFF (Dec. 31, 2025); *Maharashtra Kidney Racket Probe: Cops Leave for Delhi and Trichy to Apprehend Two Doctors*, THE PRINT (Dec. 31, 2025).
[19] *Fake Doctor Who Facilitated Farmer's Travel to Cambodia to Sell Kidney Held*, INDIAN EXPRESS (Dec. 25, 2025).
[20] *Update on Organ Transplantation*, PRESS INFO. BUREAU (Mar. 10, 2026)

of India's transplants carried out under the National Organ Transplantation Programme had reached 20,019.[21]

VI. Constitutional Dimensions and the Need for Uniformity

The right to health as an aspect of life as guaranteed by Article21 has been judicially recognised. When it comes to the Indian Society of Organ Transplantation, the Supreme Court pointed out that "lack of a nationally uniform policy" would allow loopholes in the game, resulting in "discrimination among gender, class and regional factors". The 2011 amendments and 2014 rules, which are the subject matter of a few states -Andhra Pradesh, Karnataka, Tamil Nadu, Manipur, Nagaland, and Union Territories- have not yet been adopted. The Court instructed the Centre to formulate a "national policy" and "model allocation criteria" for gender and caste discrimination and establish "uniform criteria for donors."[22] To prevent the commercialisation of organs, the Court has called for greater protection of donors.

VII. Ongoing Challenges

The issue is multifaceted: Authorisation Committee delays, interstate checks for swapped organs, and organ trafficking continue without sufficient prosecution. India is still a country with an opt-in donation model for organs of the dead, which results in much lower donation rates than "presumed consent" countries, but the Supreme Court has allowed for a bit of flexibility so that experimentation can be done through legislation by the Parliament. While we are happy to know that the Health Ministry is going all out to set up a dedicated cyber unit which is going to monitor online dealings of body parts, the unit must be adequately resourced with funds and manpower for this to be a success.

---

[21] *Id.*

[22] *Supreme Court Calls for National Policy to Address Inconsistencies in Organ Transplantation*, BAR & BENCH (Nov. 19, 2025