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WHO OWNS THE HUMAN ORGAN? LAW AND BODILY AUTONOMY

BALPREET KAUR BHATTI

ABSTRACT

The article examines the legal, philosophical, and regulatory aspects concerning human organ ownership, bodily autonomy, and the commercialisation of organs. In the past, both common-law and ecclesiastical traditions upheld a strict principle that the body could not be treated as property, considering physical remains to be non-commercial expressions of one's identity rather than something that could be traded. Yet the progress made in modern medicine—such as in biobanking, tissue research, and transplantation has brought this traditional view into question.

By looking at important judicial rulings such as *Moore v. Regents of the University of California*, a case in which property claims in relation to excised cells were rejected although informed consent was upheld, and *Yearworth v. North Bristol NHS Trust*, the case which acknowledged a limited ownership interest in stored biological materials, this article looks at the way in which courts deal with the conflict between bodily autonomy and property law. In India, the UK, and the US statutory systems give priority to informed consent, authorization, and fiduciary duties rather than to property ownership, while at the same time enforcing strict bans on the sale of organs. The article also looks into the 'dead donor rule', posthumous proxy decision-making, and the global black market in the trading of organs. The paper shows that contemporary jurisprudence uses bodily autonomy as a safeguard against non-consensual exploitation rather than as a tool for commerce, thus creating a legal approach that is centered on dignity and which protects the integrity of the human body from market influences.

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INTRODUCTION

The question of who owns a human body organ sits at an uneasy junction between property law, medical ethics, and the constitutional guarantee of personal liberty. For most of the legal history, the human body was treated as something outside the reach of ordinary property rules altogether and not as an asset to be bought, sold or possessed, but the very seat of personhood. Yet modern medicine has made the body divisible in ways earlier laws could never have anticipated. Organs can be removed, preserved, transplanted, and in some contexts commercially exploited, forcing courts and legislation to ask a question that once seemed unnecessary: if a kidney, cornea, or even a strand of tissue is separated from the person from whom it came from, who, if anyone, owns it?

THE TRADITIONAL RULE: NO PROPERTY IN THE HUMAN BODY

The English common law, which has influenced most Commonwealth jurisdictions including India, historically held that there could be no property in a human corpse. This rule largely emerged from ecclesiastical law, where the dead body was regarded as belonging to no one; it simply existed to be buried with dignity, not to be owned, traded, or treated as an economic asset. Over time, courts extended a version of this logic to living bodies as well and stated a person could not be said to “own” their own body in the same sense as they own a car or piece of land, precisely because property implies the possibility of transfer, sale and exclusive control by another and allowing a market in human bodies or their parts was thought to offend basic notions of human dignity.

This “no property” principle served an important protective function. It prevented the body from being reduced to a commodity, insulated the deceased from exploitation and kept the emerging fields of anatomy and pathology from sliding into a trade in body parts. However, as medicine advanced, particularly with the development of blood transfusion and tissue banking, this eventually led to the development of organ transplantation in the mid- twentieth century; the rule began to strain against practical reality. Hospitals needed legal clarity about who could authorise the use of excised tissues for research; families needed to know whether

they could direct what happened to a deceased relative's remains; and patients increasingly wanted a say over biological material taken from their own bodies during treatment.¹

THE TURNING POINT: MOORE V. REGENTS OF THE UNIVERSITY OF CALIFORNIA

A landmark case that really shaped the discussion around patient rights is the 1990 ruling by the California Supreme Court in *Moore v. Regents of the University of California*. In this situation, John Moore was receiving treatment for leukaemia at UCLA Medical Center when his doctor removed his spleen. Unbeknownst to Moore, his cells had unique qualities that his physician later turned into a profitable cell line without Moore's consent or knowledge. The doctor went on to patent this cell line and struck several profitable deals based on it. When Moore found out, he decided to sue, claiming that the defendants had illegally taken his cells for their own financial gain.

However, the California Supreme Court dismissed his claim related to ownership of the cells. They reasoned that once his cells were removed from his body, he no longer had ownership rights over them. They were concerned that allowing patients to claim ownership of their excised tissues could complicate medical research and treatment. That said, the court didn't leave Moore empty-handed. They found that his doctor had violated ethical obligations by not disclosing his financial interests in Moore's cells before the surgery. In short, the court shifted the focus from ownership to the importance of consent and patient autonomy, setting a precedent in the justice system that protects individual rights while addressing complex medical issues.²

YEARWORTH AND THE EMERGENCE OF A LIMITED PROPERTY INTEREST

It is not the case that all courts have applied Moore's reasoning without making any changes. In the case of *Yearworth v. North Bristol NHS Trust* (2009), the Court of Appeal in England and Wales looked at a claim made by men whose sperm samples, having been stored before they started chemotherapy, were negligently destroyed when the hospital's storage equipment failed. Since the sperm was no longer part of their bodies, those men could not bring a claim

¹ Zamora C, 'Is Your Body Legal Property? Exploring the Complexities of Bodily Autonomy' (*LawShun*, 26 September 2025) <https://lawshun.com/article/is-my-body-considered-property-under-law> accessed 19 September 2026

² (*Moore v. regents of university of california (1990)* :: :: *Supreme Court of California decisions :: California case law :: California law :: U.S. law :: Justia*) <https://law.justia.com/cases/california/supreme-court/3d/51/120.html> accessed 19 September 2026

in negligence for personal injury, and conventional legal doctrine also held that they had no property rights in the samples. However, the Court of Appeal decided that the men did have a kind of ownership which was enough to support a claim, because they had produced the samples using their own bodies with the specific intention of using them later, and that the traditional rule stating there was no property should not be applied in an absolutely rigid way so as to leave them with no remedy in the case of the destruction of something of such personal significance. The *Yearworth* case is important because it demonstrates that the "no property" rule is not absolute; exceptions have been made by the courts, especially in cases where tissue has been to some extent worked on, skilled at, or transformed (this so-called "work and skill" exception was first proposed in earlier cases concerning preserved anatomical specimens), or where fairness clearly requires a remedy. The outcome is therefore a fragmented and inconsistent body of law: in some situations, courts treat bodily material as property; in others, they do not, with the decision depending largely on the context, purpose, and interests involved.³

BODILY AUTONOMY AS THE ORGANISING PRINCIPLE

The right to education stands as an essential human entitlement which serves as a transformative force for both individual and social advancement. Education consists of the process through which people gain knowledge alongside skills and values and understanding through both formal education and informal learning and life experiences. Education delivers more than facts because it develops students into thinkers who solve problems while creating solutions and expressing themselves effectively. People develop essential skills which allow them to handle complex situations while making wise choices and creating positive impacts in their communities.

The economic growth of nations depends on education, which simultaneously drives innovation and helps lower social disparities. Education allows people to achieve their goals and enhance their economic situations while escaping poverty patterns. A society needs to invest in quality education for every individual, regardless of their background, to establish an equitable, sustainable future that will lead to prosperity.⁴

³ (*Yearworth v North Bristol NHS Trust*) <https://mcbridesguides.com/wp-content/uploads/2013/09/yearworth-v-north-bristol-nhs-trust.pdf> accessed 19 September 2026

⁴ Bell S, 'Body Autonomy: A Human Right with Legal Protections' (*Schwartz Cohen Law*, 31 August 2026) <https://schwartzcohenlaw.com/body-autonomy-a-human-right-with-legal-protections/> accessed 19 September 2026

STATUTORY FRAMEWORKS: CONSENT RATHER THAN PROPERTY

Because courts have been reluctant to build a stable law of ownership over body parts, legislatures have stepped in with detailed statutory schemes that regulate organ removal and transplantation through the language of consent and authorisation rather than property. In India, the Transplantation of Human Organs and Tissues Act, 1994, establishes a regulatory structure requiring free and informed consent from living donors, restricts donation largely to near relatives with independent authorisation committees reviewing other cases to prevent commercial exploitation, and criminalises the commercial dealing in human organs. Death, under this framework, is also given a specific legal definition, including brain-stem death, to enable timely organ retrieval while safeguarding against premature or improper removal.

Similarly, the United Kingdom's Human Tissue Act 2004 was enacted partly in response to scandals in which organs and tissue from deceased patients, including children, had been retained by hospitals for research without proper family consent. The Act makes “appropriate consent” the central legal requirement for the removal, storage, and use of human tissue, whether from the living or the dead, and establishes a Human Tissue Authority to oversee compliance. In the United States, the National Organ Transplant Act of 1984 similarly prohibits the sale of organs for valuable consideration in interstate commerce, while relying on institutional consent processes, organ procurement organisations, and the Uniform Anatomical Gift Act framework adopted by individual states to govern donation. Across all these systems, the common thread is unmistakable: the law does not attempt to declare who “owns” an organ so much as it specifies who must consent before it can be removed, used, or transplanted, and it firmly forecloses ownership from becoming a vehicle for sale.⁵

THE DEAD DONOR RULE AND POSTHUMOUS AUTONOMY

The ethical and legal issues surrounding organ retrieval after someone has passed away hinge on a vital question: when a person can no longer make decisions for themselves, who has the legal right to determine what happens to their body? Typically, legal systems tackle this dilemma by trying to extend the concept of autonomy beyond the point of biological death. In most places, the wishes of the deceased expressed through organ donor registries, advance

⁵ Salvaterra E and others, ‘Banking Together. A Unified Model of Informed Consent for Biobanking’ (*EMBO reports*, April 2008) <https://pmc.ncbi.nlm.nih.gov/articles/PMC2288758/> accessed 19 September 2026

healthcare directives, or formal written statements are given priority. This is based on the belief that a person's right to self-determination should still be respected even after they have died. \

If there are no clear instructions left behind, the law usually hands over the decision-making power to the surviving family members. It's important to note that the law doesn't view these family members as owners of the deceased's body; instead, they act as decision-making proxies. Their role is to make choices that reflect what the deceased would have wanted. This arrangement doesn't imply that families "own" the remains; rather, it provides a practical and legally sanctioned way to make quick decisions, with close relatives seen as the best guardians of the deceased's values and dignity. At the heart of this entire system is the "dead donor rule," a key ethical guideline that states a donor must be legally declared dead—either through irreversible cessation of circulatory or brain functions before any vital organ retrieval can take place. This strict legal requirement stems from a significant regulatory concern: if the focus shifts to the medical or financial value of organs over patient care, healthcare providers could find themselves in serious conflicts of interest. This could lead to compromised end-of-life care, premature declarations of death, or even the exploitation of vulnerable patients.

The reason human organs are so valuable, both in terms of healing and money, is exactly why legal systems steer clear of using property terms. By intentionally swapping out ideas of ownership for concepts like consent, authorization, and fiduciary responsibility, the law safeguards the rights of both living patients and those who have passed away. This legal framework creates a clear boundary around human remains, making sure that even after death, our bodies are seen as a reflection of our humanity rather than just something to be exploited for profit.⁶

COMMERCIALISATION, EXPLOITATION, AND THE GLOBAL ORGAN TRADE

Even though there are strict laws against the commercial sale of human organs, a bustling black market is thriving in various parts of the world. This underground trade is driven by a harsh reality: there's a massive gap between the countless patients suffering from severe organ failure and the limited number of organs donated out of goodwill. Since official healthcare systems

⁶ Schweikart SJ, 'Reexamining the Flawed Legal Basis of the "Dead Donor Rule" as a Foundation for Organ Donation Policy' (*Journal of Ethics | American Medical Association*, 1 December 2020) <https://journalofethics.ama-assn.org/article/reexamining-flawed-legal-basis-dead-donor-rule-foundation-organ-donation-policy/2020-12> accessed 19 September 2026

can't keep up with this overwhelming need, these illegal markets pop up to fill the void, operating completely outside any regulatory oversight or medical guidelines.

As a result, this illicit trade often preys on vulnerable populations who are struggling financially. People facing extreme poverty, crippling debt, or social exclusion frequently find themselves caught up in these transactions, often feeling compelled by desperation rather than true choice. In reality, those selling their organs often undergo insufficient medical evaluations, receive little post-operative care, and end up with far less money than they were promised, while brokers and middlemen pocket the lion's share of the profits. This ongoing situation sparks a heated legal and ethical discussion about how to reform the market:

1. **Supporters of a Regulated Market:** They argue that creating a legal, government-regulated system with standardized compensation, essential health protections, and proper oversight would dismantle exploitative criminal networks, safeguard the health of living donors, and honour individual autonomy.
2. **Opponents of Commodification:** They believe that treating human organs as commodities fundamentally disrespects human dignity, reduces the body to a mere product, and creates an unfair situation where the less fortunate bear the physical burdens for the wealthy.

At the heart of this deadlock lies a significant conceptual divide in contemporary legal philosophy. Autonomy is widely seen as a protective "shield," safeguarding individuals from having their bodies used without clear consent. Yet, legal systems intentionally stop short of allowing that autonomy to become an aggressive "sword" that would enable people to sell their tissues without restrictions. The reasoning behind this is that unbridled commercial freedom could lead to more subtle and harmful forms of structural coercion.

CONCLUSION

The question of "who owns a human organ" is surprisingly complex, far beyond what it might seem at first glance. Instead of simply treating it as a matter of property, legal systems in both common-law and civil-law traditions have come together around a framework that emphasizes consent, authorization, and bodily autonomy. Landmark cases like *Moore v. Regents of the University of California* and *Yearworth v. North Bristol NHS Trust* show courts grappling with the traditional property rules, often opting to focus on autonomy, control rights, and fiduciary duties to protect individual interests rather than granting full ownership rights over removed human tissue. In countries like India, the United Kingdom, and the United States, laws

reinforce this perspective by prioritizing informed consent as the key legal requirement for organ removal and transplantation, rather than ownership. At the same time, these jurisdictions impose strict laws against the sale of organs to prevent exploitation and coercion. This legal framework views the human body not as a mere commodity to be traded, but as a vital expression of personhood. The individual, in certain post-mortem cases, and their close family have the legal authority to decide how their body parts are used or donated, but they cannot profit from them. In the end, this approach seeks to balance the significant medical benefits of organs with the core moral belief that human beings should not be treated as commercial items. While there is ongoing tension between addressing organ shortages and preventing exploitation, legal systems largely prioritize the protection of human dignity over market interests. The law moves away from property models, embracing a dignity-centered approach that safeguards bodily integrity from commercial pressures while respecting individual self-determination.⁷

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