

بيع الأعضاء البشرية بين الإباحة و
التجريم
(دراسة مقارنة)

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THE SALE OF HUMAN ORGANS BETWEEN
LEGALIZATION AND CRIMINALIZATION
(A COMPARISON)

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ABSTRACT

The topic of this research paper is (THE SALE OF HUMAN ORGANS A COMPARISON STUDY BETWEEN THE UNITED STATES OF AMERICA & OTHER COUNTRIES INCLUDING IRAQ). This study argues the importance of having a legal human organ market. There are three reasons for this argument. First, governments all over the world are facing human organ shortage. Second, most hospitals are using the waiting list policy, which is causing huge desperation. Third, the black market of human organs is expanding every day.

THE SALE OF HUMAN ORGANS A COMPARISON STUDY BETWEEN THE UNITED STATES OF AMERICA & OTHER COUNTRIES INCLUDING IRAQ

I. Introduction

Organ transplantation is the moving of an organ from one body to another or from a donor to a recipient, in order to save the recipient life. If there is someone you love facing death do you perform everything possible to save his or her life? There are millions of people around the world suffering from the shortage of human organs; many of them die every day because of the long waiting list policy in the United States. The organ shortage is not a new dilemma, but the question is how to solve this problem with minimum losses. The prevention against the sale of organs plus the impact of the waiting list policy are causing death to thousands of people and making the country lose a lot of money. Due to the prevention of sale by most developed countries such as the United States, brokers now play a major role in expanding the human organs black market. In some other countries such as India, Iran and China people can legally sell their organs directly to patients or through brokers. In some other countries selling organs is not allowed for religious reasons, such as most of the Islamic countries. In this research paper we will try to explore the importance of legalizing the sale, which other people may disagree with.

The shortage of human organs for transplant is very well known by now. All over the world, huge number of patients are undergoing dialysis, but only a small percentage of kidney transplants are performed annually. It's very obvious that the demand for transplants far exceeds the supply. Furthermore, because demand is growing faster than supply, the shortage percentage is getting higher every year. Transplants offer patients a longer and better life, plus transplants are extremely less expensive than any other procedure like dialysis on a lifetime basis. Unfortunately, it is currently illegal in most of the modern countries to provide the supply of organs through an organ market.

The waiting list medical system in the United State developed out of the National Organ Transplant Act in 1984, which established the Organ Transplant Network. The rules that govern the waiting list policy vary from patient to another. The patient priority on the list depends on, medical importance, blood, size match with the donor, and time on the waiting list. Since last year 70,000 Americans are waiting for different kinds of organs, according to the United Network for Organ Sharing, which controls the national waiting list. Some people wait several years for a good match. According to the United Network for Organ Sharing, the average waiting time for an organ is three to five years, during that period of time a large number of patients dies before they get the chance to receive an organ. Some of these patients are waiting for a kidney or for livers, hearts and lungs, which mostly come from deceased donors.

More than fourteen countries have agreed to impose laws to fight trafficking in human organs, a business that takes advantage of the world's poorest people. This agreement is the first ever international treaty to fight illegal human organ sale, but fourteen nations are not enough to fight a massive organized black market. According to the United Nation public health body , illegal trade in organs has risen to such a level that an estimated 10,000 black market operations involving purchased human organs now take place annually all around the world. As the universal demand for live transplants keeps rising, the organ trading business is rapidly expanding, dominated by brokers and facilitated by fragile international legislations, extensive corrupt practices and a general lack of public awareness regarding organ sale. The black market is not limited to just brokers and corrupted medical practices but, has expanded to include terrorist organizations like ISIS. ISIS has turned its hand to human organ trafficking to fund terror across the world. Furthermore, ISIS and other terrorist organizations are selling human organs harvested from living hostages and its own dead soldiers to fund terror specially in the Middle East area.

Historically, selling human organs is not a new subject; it has begun to spread since the beginning of the nineteenth century until the present day. This business actually started after few successful transplant operations in Europe and North America. In 1954, the kidney was the first human organ to be transplanted successfully. Liver, heart and pancreas transplants were successfully performed by the late 1960s, while lung and intestinal organ transplant procedures were begun in the 1980s. In general, countries are facing huge organ shortage worldwide. Hospitals in the United States started using the waiting list policy since the transplant act of 1984. Currently more than 85,000 Americans are registered on waiting lists, waiting for their turn to get a healthy kidney (Satel, 2010). Lots of people are asking why the government does not allow the sale or at least use the opt-out

system if such action may solve the problem. At the beginning of the nineteenth century, organ transplant operations depended on organ donations. Around the world, organ donation policies vary from country to another. The donation systems around the world are either opt-in or opt-out system. With an opt-in system, people have to voluntarily sign up to donate their organs after death. In opt-out systems, organ donation will occur automatically unless a specific request is made before death. The US currently uses an opt-in system. According to the US Department of Health & Human Services, 28,000 transplants were made possible last year due to organ donors, but that is not enough to cover the 85,000 patients who still waiting for donors. Many studies by high class universities such as the University of Nottingham, University of Stirling and Northumbria University in UK found that countries using opt-out systems had higher total numbers of organs donation. These donated organs through the opt-out system can cover the majority of people on the transplant waiting lists. The studies also showed that the Opt-out systems had the greater overall number of organ transplants comparing with the opt-in systems. With the aim to increase the number of organs for transplantation, local health authorities face the mystery of whether they should change from an opt-in to an opt-out consent system, or stick with their current system. The UK, Wales has recently decided to change from opt-in to opt-out consent, depending on two theories. First, opt-out consent systems are likely to bridge the gap between people's intentions to donate and their behavior. Second, in the opt-out systems people will be more tending to donate their organs when the default is to be a donor. Finally, most recent statistics also shows that many countries that applies the opt-out system, do not experience lack in human organs like, Spain, UK, and Wales.

II . The transplant act

In order to improve the organ matching and placement process, the U.S. Congress passed the National Organ Transplant Act (NOTA) in 1984. Also In 1984, the (NOTA) established an Organ Procurement and Transplantation Network (OPTN) to maintain a national registry for organ matching, and to be created and run by a private, non-profit organization under federal contract. In 1986 the United Network for Organ Sharing was first awarded the national OPTN contract by the U.S. Department of Health and Human Services, as part of the OPTN contract to, establish an organ sharing system, establish a system to collect, store, analyze and publish data, and inform, consulted and guided persons or organizations concerned with human organ transplantation. This act also prohibits the sale of organs, either directly or indirectly. In addition this law provides restriction against treating your body as a property. This kind of restriction is odd comparing to the possibility of donating a fetus in exchange for large sums of money from under the

table. Many people believe that protecting certain ethics is very valued, but others believe that protecting people's lives is more valuable. Because of this act, there are only 20,000 kidneys available for 85,000 patients in the United States. Five thousand patients die annually in hospital beds waiting for a kidney transplant (Gregory, 2011).

Before 1984 the donation of human organs in the United States wasn't restricted by a federal law. Each state use to have their own law that govern the sale or donation of human organs. At that time it was possible for a patient to obtain a human organ without being involved in the waiting list policy. After the year 1983, health care cost increased rapidly in the United States. There may not be a clear fundamental connection, but it is worth considering it. Also, organ demand has increased and supply has decreased after the organ transplants act of 1984. Since the escalation of health care prices in the United States has began in 1983 and the congress enacted the transplants act of 1984, a lot of people are dying due to the lack of human organs (Phillips, 2015).

The 1984 transplant act is "An Act to provide for the establishment of the Task Force on Organ Transplantation and the Organ Procurement and Transplantation Network, to authorize financial assistance for organ procurement organizations, and for other purposes" PL 98-507 (S 2048). When the National Organ Transplant Act was created by the Department of Health and Human Services in 1984, it established an obvious judgment on the property rights of human corpse. At that time, it was a great idea because deceased organ donation was able to cover the demand but because the demand is rapidly growing every day, this system is very close to collapse as a result of the huge number of patients who still waiting for their turn on the waiting list. Even if all of the deceased donated their organs it would still not be enough to cover the current shortage, because of the obesity epidemic a lot of bodies cannot be used for transplantation. The transplant act provided an access to legal organs in America, also through applying this act less people will search for illegal organs. On the other hand, no one can blame people when it comes down to a life or death situation. This act forces citizens to search for options outside the United States and risk legal consequences when waiting is not in favor for the patient. All this could be avoided by creating a realistic program for donors and recipients at any socioeconomic level. This law has served successfully in the eighties of the last century but now our nation needs a real alternative to resolve the organ shortage.

For the past 30 years, the prohibition against buying and selling organs in the United States has created a big gap between supply and demand. While society has not prevent the sale of hair, sperm, and blood, the question here is, whether society should allow the sale of human organs or not. There is a

growing desire of individuals to sell their organs for transplantation, because of the financial benefit and the explosion of the biotechnology industry. According to the Prohibition of organ purchases act in 1984, " It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce...any person who violates...shall be fined not more than \$50,000 or imprisoned not more than 5 years, or both. " 42 U.S.C.A. § 274e. Thus, the organ donation system in the United States relies on organ donation by families or other individuals. If no match emerges, patients have to go through the waiting list policy hoping that a random match can save their life. The idea of legalizing the organ sale might sound horrible to most people, but it shouldn't, especially since the statistics shows that, there are only about 20,000 kidneys every year for the roughly 85,000 patients on the waiting list. In 2008, nearly 5,000 died waiting (Gregory, 2011). Ending the prohibition on organ sale in the United States would not only allow more organ transplants to occur every year, therefore saving more lives, but would also reduce crime and violence associated with the current organ shortage.

Most developed countries prevent the sale of human organs for ethical reasons like the United States of America and UK. On the other hand countries like Iran, the sale of human organs for money is legal. In Japan, you can buy any organ you need or a baby for a suitable amount of money. Also in Japan, "for the right price, you can buy livers and kidneys harvested from executed Chinese prisoners" (Gregory, 2011). Many patients now travel to such countries to do transplant surgeries rather than being under the mercy of the waiting lists.

The countries that allow the sale of human organs have made progress in several areas such as the waiting list problem and organ shortage by allowing the sale. Since the Iranian government began allowing the sale of human organs in 1988, the hospitals waiting lists almost vanished. Iran also made great progress in the field of deceased donation. In 2007, just 16 percent of the Iranian kidney transplants came from deceased donors and the rest came from the Iranian organs market. Also, the Iranians have solved eighty five percent of their kidney shortage by legalizing the sale through the governmental hospitals (Satel, 2010). In Iran, hospitals play a mediating role between the patient and the donor in accordance with the rules and conditions of the Ministry of Health in Iran. The story started in 1988, a compensated organ donor transplant program was adopted in Iran. As an outcome, the number of organ transplants increased in 1999, the organ transplant waiting list became part of the Iranian medical history. In 2005, a total of 19,609 organ transplants were performed in the Iranian hospitals for people from all around the world. (Ahad J. Ghods, 2006)

III. The black market expansion

The huge profits made by the black market through selling human organs has led to an enormous expansion in the organ black market all around the world. People can observe different ranges of organ prices around the world. The prices depend on the black market power in each country. For example, kidney price in the US black market costs up to \$ 260,000, while in China it is only \$ 62,000(Phillips, 2015). Black market expansion has included even terrorist organizations that take organs by force, like ISIS in Syria and Iraq. ISIS has turned its hand to human organ trafficking to fund terror across the world, these organs harvested from living hostages and dead soldiers. On the other hand ISIS commanders have hired foreign doctors to run the organ trafficking system from a hospital in the captured city of Mosul, northern Iraq, by that they already started generating huge profits(Phillips, 2015).

The organs black market is a hazardous matter for both the donor and the recipient, because there are no guarantees for both sides plus its illegal. Statistics show that 63,000 kidneys annually been obtained illegally from Africa, Asia, Eastern Europe and South America by the black market(Satel, 2010). According to the United Nation yearly report countries like China, India, Pakistan, Egypt, Brazil, the Philippines, Moldova, and Romania are among the world's top providers of trafficked organs. These organs are either sold domestically, or internationally to be shipped into patients from rich countries like the US, Europe, the United Arab Emirates, Saudi Arabia, and Israel. The huge profits earned by the black market as a result of preventing the sale by many countries encourages organ brokers to commit horrible crimes in order to get such organs. Three years ago, Indian police discovered 500 kidneys were forcibly taken in order to be used by the black market brokers (Gregory, 2011).

From where does the black market provides its organs? Not many people ask this question, because they just want to survive. The black market uses many methods to continue selling organs, like deceiving the poor and even

recruiting criminals to extract organs by force. Many poor people in India and Bangladesh sell their kidneys through a broker as a result of extreme poverty. Sometimes they just want to ensure their family future. India is a very good example for poor people who sell their organs because of poverty. Forty five poor people have sold their kidneys in Kerala-India and another thirty received a deposit in order to be prepared for the surgery (Jayakrishnan & Jeeja, 2003). Bangladesh is also suffering from extreme poverty, this poverty is forcing people to sell their organs in order to repay their debts. During a visit to Bangladesh, one of the researchers Mr. Moniruzzaman interviewed 33 people who sold their organs because of

poverty. He says that most of them do not know how is the kidney function. They just needed money to pay their debts (Resnick, 2012).

On the other hand the Iraqi legislator has headed towards preventing the human organ sale in accordance with Law No. 28 of the year 2012. The Iraqi law No. 28 of the year 2012 defines the sale of human organs as follows: Any recruitment , control of persons by threat of force or abduction, fraud, deception, use of power or receipt of funds to obtain the consent of a person to sell his or her organ is consider a criminal act in accordance with the Iraqi law, which may be sentenced to life imprisonment. In 2012 when the Iraqi legislator legislated this act, the legislator aimed to reach two goals, first, is to save the human dignity by preventing the sale of human organs for money and to provide more justice to the victims of organs trafficking by distinguishing this kind of criminal action to be treated with more harsh punishment than other similar crimes.

Back to the Iraqi laws, the Iraqi legislator, according to law No. 11 of 2016, allows the donation of organs from one person to another without any financial charge, provided that this action does not cause the death of the donor. The same law authorizes every person who is fully and legally qualified to writes his will and mentions his desire to donate his or her organs after death. Furthermore, despite these Iraqi laws it is well known by now to everyone who watches the news that Iraq is suffering from a large black market of organ sale and human trafficking since terrorist organizations began to spread in Iraq after 2003.

The black market also expands very fast as a result of the huge profits, generated by selling organs. Now we are witnessing a black market new era, the era of violence and organized crime. Even doctors who work in some private hospitals in India are involved in illegal organ transplant operations and some of them work as brokers too (Jayakrishnan & Jeeja, 2003). The black market as well started entering to the developed countries like the United states through secret networks. Recently a man in New York City pleaded guilty for the first case of organ trafficking in the United States. A man from Brooklyn admitted to brokering of organ sales among Israeli donors and US recipients. He earned \$410,000 from these trades (Resnick, 2012).

IV. Why we should legalize the sale

The idea of establishing a market for organs is now the subject of unusual controversy. Opponents say that the idea of creating a human organs market is beyond the limits of conventional morality and invoke fairness and justice. Professor Anthony Warrens says that "the idea of marketing parts of our bodies as items for sale is completely not acceptable" (Smith, 2011). Others say that in addition to the lack of morality in such a market, it would be

inequitable to many people. This team believes that such a market will lead to exploitation and unjust rewards for the rich people against the poor (Gregory, 2011). However most of the western governments regard the organ market idea as abhorrent and quarrel both that the practice would be immoral and that it should be excluded.

On the other hand the supporters to the organs market idea believe that creating such a market will solve many problems, such as organ shortage, waiting lists, and the black market danger. Allowing the sale of human organs via specialized market will reduce the shortage of human organs. In addition, such a market will make the waiting lists vanish over time as the Iranian experience (Satel, 2010). Finally, such a market will eliminate the existence of the black market. By solving these three main problems, we will be able to save thousands of lives. A lot of people are demanding freedom when it comes to controlling their own organs. These people are demanding to be free to sell their own organs, either before death or after death (Gregory, 2011). Through creating an organ market we can save thousands of lives, millions of dollars, and eliminate the black market role. Every day in the United States, 30 people die as a result of preventing the sale of human organs (Phillips, 2015). This prohibition pushed a lot of desperate people to resort to brokers, in order to save their own lives from the waiting lists nightmare.

Countries lose millions of dollars as a result of using the waiting lists policy. kidney patients need dialysis if they don't receive a kidney. Medicare in the United States spends more than \$70,000 per patient for yearly dialysis, compared to less than \$17,000 for a functioning transplant patient (Phillips, 2015). Eight thousand patients are registered on the waiting lists in the UK; the government spends huge amounts of money for their treatment. From the eight thousand patients registered in UK, 500 dies annually before they receive an organ and the number is increasing by 8% every year (Gregory, 2011). This means that countries are losing money and citizens as a result of using the waiting lists policy. Most of the people who are registered on the waiting list lives with the fear of death for many years. Sadly, the facts are not in their favor. Most patients are dying while on the wait list.

V. Conclusion

As we mentioned earlier that the opposing team argue that the idea of selling human organs is not ethical at all, they also mention that legalizing the sale will lead to the exploitation of the poor. That's why they say that such a sale is immoral act because it exploits human poverty. This team, arguments are very fragile for the following reasons.

First, The poor will continue selling their organs anyway whether its legal or illegal. We can observe that clearly in India, even after the 1994 organ prevention act, people continued to sell their organs to build houses and feed

their children. (Jayakrishnan&Jeeja, 2003). Second, by legalizing the sale of human organs the governments will be able to save the poor from the black market risks. Also through legalizing the sale the governments will be able to eliminate organ shortage and long waiting lists.

Life will continue whether they do legislate a law regulating the sale of human organs or not; but we strongly believe that saving people's life is the most significant task, that governments should truly consider. We think leaving patients to suffer in hospitals as a result of organ shortage is the biggest moral crime against humans. Legalizing the sale of human organs would mean an immediate opportunity for saving thousands of lives and millions of dollars. Also by legalizing the sale, the Medicare will spend less money on kidney dialysis every year. As well a lot of wealthy people will skip the waiting list buying their own organs, which reduces the reliance on the waiting list. We also believe that humans should not be controlled by any law that erases their ability to sacrifice for others, even if it is rewarded. The idea of a rewarded donor will help us to avoid the risk of the black market; plus it will save thousands of medical conditions around the world. Developed countries must fight the black market through supporting donors who are facing financial circumstances.

The organ market idea started because of three factors, the organ shortage, long waiting lists and the black market danger. Selling human organs to people who need these organs to continue their living journey should be considered a blessing not an indignation. In addition creating such a market, controlled by the government will definitely end the local and the national organ shortage. Finally, People will not feel the pain of others, unless they lose someone they really love over an organ shortage.

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