

## Review on recently introduced 4 Laws in India: Transplantation of Human Organs and Tissues Rules, 2014; the Mental Healthcare Act, 2017; the Surrogacy (Regulation) Act, 2021; and the Criminal Procedure (Identification) Act, 2022

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### Abstract

India's legal framework has seen substantial reforms in recent years, addressing critical issues across various sectors. This review delves into four significant laws that have been introduced or amended in the past decade: the Transplantation of Human Organs and Tissues Rules, 2014; the Mental Healthcare Act, 2017; the Surrogacy (Regulation) Act, 2021 and the Criminal Procedure (Identification) Act, 2022. Each of these laws plays a crucial role in regulating activities, protecting rights, and ensuring justice.

**Keywords:** Indian Legal framework; critical issues; significant laws; justice

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### Introduction:

The Indian legal system has been in dire need of an amendment, to address various issues that have plagued the system since the conception of these laws. This review shall probe into five significant laws that have been brought into effect or amended in the past decade including the Transplantation of Human Organs and Tissues Rules, 2014; the Criminal Procedure (Identification) Act, 2022; the Surrogacy (Regulation) Act, 2021; the Mental Healthcare Act 2017; and the Consumer Protection Act, 2019. The aforementioned laws are of critical significance for the citizens of our country as they play a major role in regulating activities, protecting rights, and ensuring justice for all. This review shall provide an in-depth analysis of these acts, their key provisions, implications, challenges, and their legal and social impact on their respective sectors.

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### 1. Transplantation of Human Organs and Tissues Rules, 2014

With the advancement of the modern healthcare system, there has been increasing demand for organ transplants in India. To ensure a safe environment, foster trust in the system, and protect the vulnerable sections of society from being exploited, The Transplantation of Human Organs and Tissues Rules, 2014 was introduced. These rules are an extension of a previously existing act, the Transplantation of Human Organs Act, 1994 and they aim to improve transparency, raise the ethical standards and to ensure a safe environment for organ transplantations within the country.

#### Key Provisions:

**Definition and Scope:** The definition of "Human Organs" has been expanded to include tissues, thereby broadening the scope of transplantation. The current definition of organs not only includes heart, liver, kidneys, lungs, pancreas, and intestines but also tissues like corneas, bones, and heart valves.

**Authorization Committees:** As per the current guidelines, there is a mandatory requirement both at the Hospital and State levels to institute an Authorization



Committee. The committee must oversee and approve organ transplants within the institution/institutions within their authority. They are also responsible for ensuring that donations are voluntary, and that no donor has been a victim of coercion.

**Donor and Recipient Regulations:**

Stringent guidelines have been put in place by the Act, for the identification and consent of donors and recipients. There is a requirement for both living and deceased donors to provide informed consent and rigorous checks have been introduced to ensure that no illegal transactions facilitated by monetary compensation take place.

**Cadaveric Donation:** The rules also promote cadaveric organ donation by creating guidelines for harvesting organs from individuals who have been certified to be braindead. The Act also includes provisions for certification of brain death. The law also had guidelines that ensconced donor registries.

**Transplant Centers:** To ensure that centers have the infrastructure, and medical personnel with necessary qualifications along with protocols for post-operative care, the rules mandate that hospitals and transplant centers have proper accreditation. The rules also set the minimum standards these centers must adhere to, to receive accreditation<sup>1</sup>.

**Implications:**

In a nutshell, the Transplantation of Human Organs and Tissues, 2014, has significantly improved and altogether streamlined, the organ donation and transplantation process in India. By expanding, the definition to include the tissues, the rules have enhanced the availability of the materials available for transplantation, which in turn saves more lives. The establishment of the Authorization Committees has added much-needed oversight into the process, thereby, reducing the risk of illegal/criminal organ trade and ensuring a steadfast adherence to the tenets of medical ethics.

The Act, however, isn't a complete success story. The execution of the rules and

guidelines as prescribed by the Act still faces several challenges. The demand for organs far outstrips the supply and hence there is a critical shortage of organs and tissues available for transplantation. The accessibility of these sophisticated services is also not uniform across the various strata in society, with rural India still lacking the necessary infrastructure to avail of such services. General public awareness about organ donation is still low, with misinformation often marring the image of the Act. This also leads to an untold number of missed opportunities for cadaveric donations.

Transplantation of Human Organ Act, of 1994, has evolved over the past decades, until many of the redressals made against the Act were addressed in the Transplantation of Human Organs and Tissues Act, of 2014. Many of the better provisions of the original Act that were repealed can be included in the Transplantation of Human Organs and Tissues Act, of 2014, including policies to increase the pool of genetically compatible donors, to bridge the gap between donors and recipients<sup>2</sup>.

**Adoption and Implementation:**

To streamline and increase the efficiency and effectiveness of the Transplantation of Human Organs and Tissues Rules, 2014, there is a need of the hour to raise public awareness through awareness campaigns across various platforms to encourage organ donation. A significant budgetary allocation from the Government should be set aside to build adequate infrastructure and train medical professionals. This will allow the transplantation services to percolate into rural areas, allowing more people access to the services. The Authorization Committee must be empowered to function independently, in a transparent manner. Regular internal and external audits can ensure compliance of the organization to ethical standards as prescribed under the rules. There is also a need to invest time and resources to develop a robust national registry of donors and recipients. This will



streamline the matching process and ensure that the time spent in waiting for transplantation services is significantly reduced.

## **2. The Mental Healthcare Act, 2017**

A turning point in India's mental health policy is the Mental Healthcare Act, of 2017, which reflects a move toward a framework that is more humanitarian, and rights-based. In place of the antiquated Mental Health Act of 1987, it established a thorough legal framework to uphold, advance, and safeguard the rights of those suffering from mental diseases. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which India joined in 2007, is one of the international human rights conventions that this Act was enacted to bring India's mental health laws into compliance with.

### **Key Provisions and Principles**

Recognizing mental illness as a real medical problem deserving of the same respect, care, and attention is one of the main tenets of the Mental Healthcare Act of 2017. It necessitates that mental illnesses be provided with the same attention, care and respect that are given to physical illnesses. The Act also stipulates that individuals with mental illnesses are not subjected to discrimination of any kind, when it comes to employment, access to education and healthcare services. The Act also strives towards a seamless integration of mental health into the public health spectrum.

**Right to Access Mental Healthcare:** The right to access mental healthcare services run or funded by the government is a fundamental right guaranteed by the Act. This applies not only to healthcare services, but also to essential medicines and accessibility of free treatment for the homeless and resource poor individuals.

**Advance Directives:** One of the major issues faced by people suffering from mental health problems is regarding their lack of autonomy regarding their treatment preferences, whenever a future mental

health crisis occurs. To circumvent this issue and to ensure that every individual has the autonomy to decide their preferred means of treatment, the act makes a provision for advanced directives, which allows them to specify their treatment preferences in advance. Only the Mental Health Review Board (MHRB) has the power to override an advanced directive that has been set forth by a patient, ensuring that the directive is in the patient's best interests. In all other situations, it should be taken as the dictum to follow.

**Mental Health Review Boards:** Mental Health Review Boards (MHRB) have been established at the state level to provide a layer of oversight regarding the implementation of the Act, protect the rights of the patients and to address any grievances they might have. They play critical roles in safeguarding the rights of the deceased, especially when it comes to less than voluntary admissions and treatments. The Act ratifies the establishment of these boards.

**Decriminalization of Suicide:** The Act recognizes that suicides are often the result of severe mental stress and illnesses and people who attempt suicide, are people who require support, care, counselling and treatment. Citing this reason, the Act decriminalized suicide, marking it as a landmark piece of legislation.

**Rights of Persons with Mental Illness:** A number of rights are guaranteed to individuals with mental illness by the Act, including the freedom to live in a community, the prohibition against harsh, inhuman, or degrading treatment, and the right to privacy and personal autonomy. Additionally, it guarantees that consent is sought before administering any treatment and that patients are informed about their course of treatment<sup>7</sup>

### **Implications and Challenges:**

Recognizing and resolving mental health concerns in India has advanced thanks to the Mental Healthcare Act, of 2017. The Act possesses the capacity to revolutionize mental health services in the nation by



emphasizing the rights of people with mental diseases and offering a structure for easily accessible mental health treatment. Nonetheless, there are several difficulties with the Act's implementation. The availability of resources is one of the main issues. Although the Act requires a wide spectrum of mental health treatments, India suffers from a severe lack of financing, infrastructure, and mental health experts. One major obstacle to the Act's successful implementation is the discrepancy between its requirements and the actual conditions on the ground<sup>8</sup>.

The knowledge and education of medical professionals and the general public is another difficulty. As the successful implementation of the Act is subject to the cooperation between those providing services and those availing it, there is a much-needed effort to raise awareness and understanding, amongst both groups. Significant resource allocation is necessary to train healthcare personnel, and judiciary for successful implementation of the Act.

The Mental Healthcare Act, 2017 is a landmark piece of legislation that could change the way mental health is provided in India. With its focus on autonomy, dignity, and the integration of mental health services into the larger healthcare system, it offers a rights-based approach to mental healthcare. The Act establishes a solid framework for enhancing mental health services and defending the rights of people with mental illnesses in India, even though there are still obstacles to overcome, notably regarding budget allocation and public awareness.

### **3. The Surrogacy (Regulation) Act, 2021**

The Surrogacy (Regulation) Act, 2021, as the name suggests was instituted to regulate the existing surrogacy practices within India, to ensure that the practices that are being undertaken are ethical and there is no exploitation of the vulnerable sections of the society. The Act also stringently restricts the practice of surrogacy to altruistic cases, where fiscal compensation is not allowed,

other than medical expenses, for pregnancy and delivery. The Act also established an eligibility criterion for prospective parents and surrogates, that must be strictly adhered to.

#### **Key Provisions:**

**Eligibility Criteria for Intending Parents:** The Act specifies that only couples of Indian nationalities, who have been legally married for a minimum period of 5 years and are deemed infertile through medical certification are eligible to seek surrogacy. The couple also must not have any surviving biological, adopted, or surrogate children. A few exceptions have been made to account for disabled children.

**Eligibility Criteria for Surrogate Mothers:** Prospective surrogate mothers must be kinswomen of the intending parents, should already have birthed a child, and should be between 25 and 35 years of age. A person can only be a surrogate mother, once in their lifetime. The Act seeks to prevent any commercialization of surrogacies wherein the surrogates are paid a monetary compensation that far exceeds medical expenses.

**National and State Surrogacy Boards:** The Act also established surrogacy boards at both state and national levels to oversee and ensure there is compliance to the rules as mentioned under the Act. The main responsibilities of the Act include granting approvals for surrogacy arrangements, ensuring prospective surrogates and intending mothers are compliant with the ethical standards, and addressing disputes.

**Ban on Commercial Surrogacy:** The Act also seeks to ban any form of commercialization regarding surrogacy, wherein monetary compensation well beyond the medical expenses are awarded to prospective surrogate mothers to influence their decision. There is also a ban on surrogacy, where they seek to produce children for sale, prostitution, or any other form of exploitation<sup>5</sup>

#### **Implications:**

The Surrogacy (Regulation) Act, of 2021,



takes a forward step towards taking measures to protect the rights of surrogates and to ensure that the practices pertaining to it are conducted in an ethically sound manner. By taking stringent measures regarding the eligibility criterion for not just surrogate mothers but also prospective parents, and restricting surrogacy to altruistic cases, the Act seeks to protect those of vulnerable sections of society and prevent the exploitation of women. The state and national boards have been established to oversee and regulate the practices related to surrogacy and to ensure that all arrangements are being carried out in accordance with the law.

The Act, however, has also been criticized for being overly restricting. An argument could be made regarding the concerns of how alarming it is that the state has started to interfere in family matters. The current definition of the Act also reduces the complexities regarding motherhood to simply “moral” or “monetary” benefits<sup>6</sup>. The eligibility criteria for surrogates and intending parents, severely limit accessibility of the surrogacy services to many couples. With limited accessibility and a ban on commercial surrogacy, there are fears that the increased demand may drive surrogacy underground, leading to illegal, unregulated, and exploitative practices, which will undermine the main objective of this Act.

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#### **Adoption and Implementation:**

For any Act to be successfully brought towards implementation, there is a need to increase public awareness regarding the legal requirements and ethical considerations of surrogacy. It should be insisted upon that medical personnel and surrogacy clinics, adhere to the guidelines set by the surrogacy boards and to not be

involved in any illegal or unethical practices. There should also be a continuous oversight by the government, to ensure that the execution of the Act is done properly to prevent any illicit practices from taking root and to protect the rights of all parties involved. There should also be provisions made to inculcate a supportive environment for surrogate mothers, ensuring accessibility to counselling, antenatal, postnatal, and other general healthcare services.

#### **4. The Criminal Procedure (Identification) Act, 2022**

The Criminal Procedure (Identification) Act, of 2022, is a landmark piece of legislation aimed at strengthening the investigating agencies and modernizing the procedure for the identification of the individuals involved in criminal cases. This Act expands the scope of data that law enforcement agencies can amass and use in criminal investigations, ensuring that the rulebreakers are apprehended speedily, thereby enhancing the effectiveness of the criminal justice system.

##### **Key Provisions:**

**Expanded Scope of Data Collection:** The Act allows Investigating and law enforcement agencies to establish a database and amass a broad range of biometric and physical data from individuals involved in criminal cases including fingerprints, palm prints, retina scans, and biological samples such as blood and DNA. The Act also permits the collection of behavioral data, including voice samples and handwriting.

**Storage and Use of Data:** The various physical and biochemical data that have been collected from the various sources by different Investigating agencies can be stored for a period of up to 75 years and can be accessed by law enforcement agencies all over the country. The Act also as guidelines for deletion of data, in cases where the individual is acquitted or discharged.

**Legal Safeguards:** As the act has a lot of provisions for misuse, there are several legal safeguards, that have been put in place, to



ensure that the individual rights are protected. One good example of this is the judicial approval that is required for collecting data from certain categories of people, especially those who have committed only minor offences. The act also deems that any data collection, if done, should be done in a manner wherein, the use of unnecessary force is avoided, and the dignity of the individual is respected<sup>3</sup>

#### **Implications:**

The Act represents a major step forward in the modernization of the intelligence-gathering system of law enforcement agencies in the country. With the expansion of the scope, the data collected by the agency is also vast, and this, in turn can be used to profile criminals, solve crimes that have been committed, and prevent future offenses from being committed. The centralized database, which will be instituted, secondary to this Act shall allow for more efficient sharing of intelligence between the different law enforcement agencies, thereby enhancing the cooperation between agencies across various jurisdictions.

However, this doesn't mean that the Act doesn't raise privacy concerns. An argument could be made here regarding how the Act is a breach in civil liberty and a sign of regression, rather than progress. There is quite evidently a huge risk for mismanagement and misuse of data. The expanded scope of data collection has also raised fears across the different segments of society, of the possibility of a "police" state, that the provision will allow for state surveillance and profiling of individuals, especially those in marginalized communities. The current Act also has a lot of tenets that are contrary to the provisions give under DNA technology (Use and application) Regulation Bill, of 2019, which can lead to confusion at best and miscarriage of justice, that too while using legal machinery<sup>4</sup>. The central database that the Act seeks to establish is also at risk of data breaches.

#### **Adoption and Implementation:**

As has been conveyed under implications, there are a few major issues that must be ironed out before the act can be effectively implemented. Several measures must be taken keeping this in mind, including the fact that law enforcement personnel should receive adequate training regarding collection and use of biometric and other metaphysical data, with adequate focus being given to respecting an individual's rights and dignity. The central database also will need to be encrypted using the latest technologies available and significant resources must be invested into maintaining a team of professionals for ensuring that there is no data breach or access by unauthorized individuals happening around the clock. There is also a need to ensure that the legal safeguards that have been mentioned under the Act are being enforced, with regular audits to ensure compliance with this. Human rights organizations and judicial authorities also need to take up and play an active role, in ensuring that the implementation of the Act does not cause grave miscarriage of personal justice and to address the various concerns regarding privacy and misuse of data.

Declaration: Few points of the article were prepared using the artificial intelligence.

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