

# CORRESPONDENCE

## **Organs for sale, philosophy for hire**

'What is the aim of philosophy?  
'To teach the fly the way out of the fly-bottle'

Leonard Wittgenstein

Throughout human civilisation, philosophers have been showing us the way out of the fly-bottle. Unfortunately, there has never been a consensus on who the flies are. Hence we have had philosophers who have taught princes how to cheat their subjects, philosophers rationalising Hitler's cruelty, philosophers explaining why one religious group or another needs to be 'cleansed' out of this or that country. No one should then be surprised that we have philosophers explaining why the sale of human organs may not be a bad thing after all and may even have much to commend it.'

Before going into the arguments offered by Janet Radcliffe Richards, I must question her basic methodology. She bases a lot of her arguments on the foundation that the alternative to selling human kidneys is having them donated. She completely ignores the possibilities of dialysis and cadaver transplantation. She also ignores the final option - choosing death with dignity in preference to life at the risk of harming another. She accepts as inevitable, and by implication, desirable, that 'each of us will do everything we can to save our lives...' I find these premises questionable.

### *Civilisation and morality*

The aim of civilisation is to secure the greatest good for the greatest number. An individual's 'strong feelings of a moral kind' may certainly not be reliable guides for action as exemplified by some reactions to inter-racial marriages, 'unfeminine women' (whatever that means) and homosexuality. Those reacting adversely to the situations just enumerated do so out of prejudice. Opposition to the sale of kidneys is based on the fact that one section of society (the rich) are sought to be benefited **at the expense of another section** (the poor). Civilisation is based on morality, liberty, equality and fraternity. When one individual is permitted to buy parts of another, these principles are violated.

### *Harm to vendors and recipients*

On a superficial level it does appear that the sale of human organs benefits both the buyer and the seller. The sale of a kidney undoubtedly provides financial relief to a family in abject poverty. I am sure that many poor individuals in India

and other Third World countries will exercise their 'autonomy' and 'consent' to sell their organs. When we oppose the sale of kidneys, we do so in the full realisation of this fact but also feel that humankind should not be thus degraded. We believe that by equitably distributing wealth and curbing the greed of the industrialised West, it is possible to provide a reasonable standard of living for all.<sup>2</sup> This is not wishful thinking, it is a political agenda. We are aware that in the meantime there is much pain for many. Wishy-washy liberals with their piecemeal reform miss the wood for the trees. They are busy applying a **Band-Aid** here and some medicines there, ignoring the basic causes that compel large segments of mankind to live in such degradation.

### *Rhetoric and reality*

While all of us must guard against tricks of rhetoric, we must also guard against flawed logic. Letting people decide what to do with their own bodies is certainly very important. I must be excused for not being overjoyed at this so-called autonomy permitting individuals to sell themselves piecemeal. Ms. Richards, so critical of those opposing the sale of organs for not adducing proof to back their arguments, has no hesitation in stating without proof: 'many vendors may feel an increase in self-respect'.

### *Will and power*

'We', meaning the comfortable academics, may lack the will if not the power to remove poverty. The poor are not going to remain silent and allow themselves to be exploited forever. The march of civilisation is inexorable even if it takes two steps forward and one step backward.

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### **References:**

1. Richards Janet Radcliffe: Organs for sale. **Issues in Medical Ethics** 1996;4:37-38
2. Antia NH: Global policies and people's health. **The National Medical Journal of India** 1993;6: 1-2.

### **Organs for sale (continued)**

Dr. Richards deserves applause for making us think

In her essay entitled Organs for sale <sup>1</sup>, Dr. Richards puts forward arguments that make you ponder. She points out that the banning of sale of organs might,

in fact, restrict the options available to the already poverty stricken person, in need of funds for dire needs and that this might be unethical. The examples she has cited are eloquent. At the same time - as can be judged from the uproar against the sale of organs by donors not related to the recipient, and against clandestine 'deals' of organ sale/organ transplants - public opinion overwhelmingly supports the ban of such sales. It would indeed be sad if the issues raised by Dr. Richards do not generate debate. Dr. Richards confines her observations to the scene in the west and to the sale of kidneys. My response to her essay is confined to the scenario in India (which has recently witnessed the most unethical marketing/procuring of organs for sale) and will, I hope, stimulate readers to debate the subject.

### *Individuals surrender some rights when they form society*

Laws regulate society and any regulation that is unjustified ought to be considered unethical. The liberty and autonomy of individuals comprising society are paramount. It is also true, however, that individuals voluntarily give up a measure of their freedom when they agree to form any society. The justification for such limitation on freedom follow upon the additional advantages which, without the formation of society, would not be available to that individual. One **example** of such a limitation of an individual's freedom that is beneficent to society is that on intrusion on the freedom of others. Such limitations attempt to balance the good of the individual against that of society.

This is the ultimate goal of ethics. In an ideal society, where such a balance exists, there would be no need for laws. Legal regulations - viewed from this perspective - must be considered as pragmatic measures, to be jettisoned as soon as they become redundant.

### *Sellers and buyers : both victims of circumstance*

Those selling or donating organs and those purchasing or receiving them are equally victims of circumstance. One is stricken by poverty and the other by disease. For us to accuse or blame one victim or the other is unfair, unjustified and in poor taste. None would contest this point made by Dr. Richards.

### **Deserving of condemnation - the middle men and the regulatory agencies**

What is repugnant is the attitude of the

middle men - the doctors and the agents - who, to say the least, have exploited the vulnerability of these victims. Almost every purchaser of an organ has been rich. Those coming to India from the Arab countries have found it difficult to seek legal remedies for the wrongs done to them. Cases of mismatched organ-transplants, made to function - only temporarily - through the use of powerful immuno-suppressant drugs, have left the recipients in a chaotic state. Some have been infected by HIV. A significant number of those selling organs have been cheated either by being conned into 'informed consent' or by being paid a paltry fraction of what the middle men received. Reports of 'donors' entering hospital for surgery unrelated to the kidney and returning minus a kidney are on record. It is difficult to imagine that the involved doctors were ignorant of these practices. More likely, they found it profitable to look the other way - even when the exploitation was obvious.

The silence and inaction of regulatory bodies like the Medical Council of India and the state medical councils can only be severely condemned. They have preferred to turn a blind eye.

#### *Exploitation*

The question that arises is, 'Why penalise the victims and rob them of the little they have?' The answer lies in the society that we live in. There are many instances of such unfairness and insensitivity.

Prostitutes are forced into the trade because of poverty or insecurity. They are victims. The offenders are the individuals who force/lure them to the trade and those who use them for their pleasures. Even so, society accepts laws to regulate these victims as pragmatic solutions.

Child labour is repugnant but a child who labours and its parents are victims. Banning child labour robs the child and its family of options that help them survive. Yet the law banning child labour has been accepted on the premise that the State will work out means to provide sustenance to the victims.

Bonded labourers and slaves have been the victims of inhuman society. When such practices were banned, the victims were robbed of the resources provided by the often tyrannical landholders. The State justifies the ban by providing doles to the victims - a pragmatic alternative.

All the arguments that Dr. Richards puts forth in respect of (a) autonomy and consent; (b) harm to the vendor; (c) harm

to the recipient; (d) collateral damage; (e) exploitation are applicable to these cases also.

*Why have such laws? What justification do they have?*

I view laws as forming two categories. One group is promulgated to set order or to pre-empt disorder (as in the case of a declared state of emergency or for pre-emptive arrests). The other set enables administration of justice. It is obvious that the former ought to be pressed into existence only when absolutely necessary in the larger interest of society and must be short-lived.

Transplantation of kidneys started as a noble activity to provide viable options to hapless victims. The vulnerability of the patients on the one hand and the poverty, ignorance and the helplessness of the potential donors on the other soon suggested avenues to be exploited by middlemen. When the medical councils - established to regulate the medical profession - preferred to remain silent and inactive, it was left to the press to voice concern but this was generally disregarded. The medical profession found fertile ground to pursue its trade. When the Consumer Protection Act was judged to be applicable to the medical profession and cases of the sale of organs were heard by the court, a curb was imposed.

It is true that the state took the softest option - pass a law to ban sale of organs - the argument being that the trade cannot be sustained without money. In the process, as pointed out by Dr. Richards, the options of the victims were reduced. What is more, it is naive to believe that a practice can be discontinued merely by passing a law.

*Why, then, do we, tolerate such laws?*

Society has linked law with order. Whenever there is disorder, people have looked to legislators and enforcers for relief. This is so in the kidney trade. Laws banning sale of organs are attempts at instilling order in the chaotic situation brought about by exploitation of society by the middle men (doctors and agents). One would expect the ban to be temporary. Once it is agreed that these are pragmatic measures, the State, the legal and medical councils, and the medical professionals must also take on the responsibility of ensuring conditions that make these measures redundant.

*What are the measures that can be taken towards this end?*

**Making full use of organs from cadavers.** Some voluntary organisations in India are already working in this direc-

tion. *Deha Dan* (donation of the body after death) is one such, interacting with the people to ensure a positive response. It will be some time ere the traditional aversion to 'mutilation of the corpse' will give way to free voluntary donation of organs. We also need efficiently run organ-banks and a system for transfer of organs to where they are urgently needed. Facilities and procedures for the removal of organs and, indeed, post-mortem examinations, must be upgraded and humanised. If the utilisation of cadaver organs is to become a reality, transparency, fair practice and humane attitudes must prevail.

**Utilising fully the organs of the brain-dead.** We must not lose sight of the fact that human beings are both crafty and ingenious. Measures must be in place to ensure that there is no misuse. The use of organs so obtained must be restricted to a few, but well spread out, centres of excellence where 'audit (medical, financial and social), review and report' of the organs re-cycled and the outcome is standard practice. Organs obtained from cadavers and those who are brain-dead must be rationed only on the basis of need.

Despite these measures, we shall still need organs from live donors. Such donation must be untainted by commerce. Public scrutiny of all such operations could curb backdoor trade. It is fair to expect that organs are taken from live donors only after the other avenues prove inadequate. This still does not address the situation where poverty leaves a person with no other option but to sell his organs to meet the medical expenses of a critically ill niece. Why should such options be denied to the person when the welfare State cannot alleviate his desperate need?

There are no easy answers. What makes it more difficult for the State is that such individuals are legion. No humane society ought to force its members to sell their organs, especially to ensure health care. The State must provide free/ subsidised health-care in every such case. And if this is not forth coming, the treating doctor would be ethically justified in abetting such a sale after publicly highlighting the cause for sale of the organ. Going against the law in ethically meritorious situations is far from shameful provided such action is transparent and without vested interest.

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#### *Reference*

1. Richards Janet Radcliffe: Organs for Sale