

## AN EMPIRICAL STUDY ON HUMAN TRAFFICKING FOR ORGAN THEFT IN INDIA

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### LIST OF CASES

1. Anil Kumar v. NCT of Delhi (Kidney Racket Case, 2008) (AIR 2018 SC 1057)
2. State of Haryana v. Amit Kumar & Ors (2013) (AIR 2017 SC 2625)
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5. Vidhya Ramesh Chand Shah v. State of Gujarat (AIR 2013 Guj 145)

### ABBREVIATIONS

SC – Supreme Court of India

HC – High Court

AIR – All India Reporter

SCC – Supreme Court Cases

Art. – Article (of Constitution)

IPC – Indian Penal Code

CrPC – Code of Criminal Procedure

Sec. – Section

ITPA – Immoral Traffic (Prevention) Act, 1956

BNS – Bharatiya Nyaya Sanhita, 2023 (replacing IPC)

JJ Act – Juvenile Justice (Care and Protection of Children) Act, 2015

POCSO – Protection of Children from Sexual Offences Act, 2012

THOTA- Transplantation of Human Organs and Tissues Act, 1994

BSA- Bharatiya sakshya adhiyanam, 2023

BNSS- Bharatiya Nagarik Suraksha Sanhita, 2023

CBI – Central Bureau of Investigation

NIA – National Investigation Agency

NHRC – National Human Rights Commission

NCW – National Commission for Women

MWCD – Ministry of Women and Child Development

ANOVA – Analysis of Variance

## INTRODUCTION:

### (i) Objective & Scope Of Study

- To analyse the Impact of the Transplantation of Human Organs.
- To suggest Preventive measures regarding human trafficking in India.
- To study about the measures taken by the Government of India to Prevent and Combat Human Trafficking.
- To find out the ratio of male and female trafficking for the illegal organ transplant.
- To examine the causes and modes of human trafficking in India.
- To protect fundamental rights under Article 21 Right to life and personal liberty and Article 23 Prohibition of human trafficking and forced labour.

### (ii) Research Problem

Creating awareness among the general public about human trafficking and the legal aid available for the people and encouraging people to approach law-enforcing authorities so that the anti-trafficking laws are effectively enforced at the ground level. When the people approach the law-enforcement authorities, the right data about human trafficking can be obtained.

### (iii) Research Question

- a) Are you aware of the term organ trafficking?
- b) The global shortage of organs leads to organ trafficking
- c) On the scale of 1-5, rate how the organ theft are increasing in this modern era
- d) In India, which state is most common for child trafficking?
- e) For which organ, the humans are prone to organ trafficking?
- f) Are you aware of Article 23 of COI which prohibits human trafficking and forced labour?

### (iv) Hypothesis

Weak enforcement of anti-trafficking laws and unawareness among people about these laws

contributes to an increase in human trafficking in the modern era.

### (v) Research Methodology

The author has adopted an empirical method with a convenient sample method to do this non-doctrinal study. Primary sources such as questionnaires and surveys are used for this research. Secondary sources such as books, articles and journals were referred for the study. The Independent variable taken here is age, gender, education qualification, Martial status, income. The dependent variables are Are you aware of the term organ trafficking, The global shortage of organs leads to organ trafficking, on the scale of 1-5 rate how the organ theft is increasing. In India which states is most common for child trafficking, for what organ the children are prone to organ trafficking. The statistical data used by the researcher is graphical representation. The sample size is 222 and the sampling method is convenient sampling.

### (vi) Research Limitations & Research Gap

One of the major limitations of the study in the sample frame. There is a major constraint in the sample frame as it is limited to the small area. Thus, it proves to be difficult to extrapolate it to a larger population. Another limitation is the sample size of 222 which cannot be used to assume the thinking of the entire population in

a particular country, state or city. The physical factors have a larger impact, thus, limiting the study.

Hidden and unreported trafficking is an obstacle in finding the correct data about human trafficking which remains largely unresearched.

### (vii) Scheme of the Study

#### CHAPTER-I – Theoretical Framework

Doctrine of Human Dignity

Doctrine of Natural Rights

Jus Cogens (Prohibition of slavery)

Doctrine of state obligation

#### CHAPTER-II – Analysis of Existing Laws

Article 21 – Right to Life and Personal Liberty

Article 23 – Prohibition of Trafficking and Forced Labour

Bharatiya Nyaya Sanhita 2023:

Section 143 – Trafficking of Persons

Section 144 – Exploitation of Trafficked Person

Transplantation of Human Organs Act, 1994

#### CHAPTER-III

Issues in the Analysis of Human Trafficking

Weak enforcement of anti-trafficking laws and unawareness among people about these laws contributes to an increase in human trafficking in the modern era.

#### CHAPTER-IV – Role of Judiciary in Human Trafficking

Anil Kumar v. NCT of Delhi (Kidney Racket Case, 2008) (AIR 2018 SC 1057)

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#### CHAPTER-V – Empirical Analysis & Finding

Visualizations of the data in the form of pie charts and bar plots. ANOVA (Analysis of Variance) is a powerful statistical method used to compare the mean of two or more groups to determine if there are any significant differences.

#### (viii) Literature Review

**Scheper-Hughes, Nancy 2004**, (SuperSummary 2018) This article tends to a portion of the moral, ethnographic and political situations of a particular multi-sited research project investigating the unlawful and secretive exercises encompassing the traffic in people and their body parts by ban specialists, kidney trackers and relocate sightseers participated in 'secondary passage' transfers in the worldwide economy. **Campion-Vincent, Veronique 2002**, (Campion-Vincent 2011) Organ burglary stories are well known overall since people find their centre thoughts tenable. In exposing these legends, folklorists might fail to remember that such stories recognize moral issues that even clinical experts managing progress in relocating innovation have not settled. **Philippe Steiner, Amy Jacobs 2008**, (Gillig 2011) Organ theft is a type of human trade in view of fortitude, fortitude prompted by death The reason for this study is to show that the type of theft differs by the material idea of the organ and that it is significant not exclusively to recognize living for sure is here called bury vivos organ gift from posthumous gift yet in addition to consideration regardless of whether organ use can be conceded. **Kenny, Mary Lorena 1999**, (Lacombe 2017) Youngster work is one of the exigencies of life in unfortunate families and a significant part of the casual work area in metropolitan Northeast Brazil. This article inspects how a discouraged neighbourhood economy, broad grown-up joblessness, monetary specialties

accessible to youngsters, and an overall excess of modest work support a business opportunity for kid work. **Snajdr, Edward 2013**, (Brain 2013) Utilising the idea of "take-up," I look at how hostile to dealing talk works as an expert story, drawing on strategies of feeling and rationale, as well as a particular sort of casualty story. I additionally think about how, regardless of an arising counter talk that questions the information and difficulties current strategy, illegal exploitation talk keeps on being retold in media and recreated in mainstream society, frequently in manners that really veer from the ongoing form of the great story.

## CHAPTER-I

### THEORETICAL FRAMEWORK

#### Doctrine of Human Dignity

Human dignity is the recognition of humans which is inherent and absolute for everyone without any discrimination on the basis of race, religion, sex, place of birth, status and ability. Dignity is intrinsic and it cannot be lost by external factors like illness, age or social status.

#### Doctrine of Natural Rights

Natural rights are inborn and available to all human beings without any discrimination on the basis of culture or societies. They are inherent rights which cannot be taken away by any government or institutions. Human beings are not commodities and they cannot be bought or sold which is a violation of natural rights. Human trafficking for organs is not only a crime but also a violation of fundamental rights.

#### JUS COGENS

Jus cogens is a latin term which means prohibition of slavery in any form like forced labour, bonded labour, trading of human beings like commodities for organs etc., It is an international law concept in order to protect victims around the world.

#### Doctrine of state obligation

This doctrine is based on the principle of due diligence. It is the duty of the state to identify

trafficking networks, investigate the complaints, punish the traffickers, compensate the victims and protect the people. The state has a special obligation to protect women and children from exploitation.

## CHAPTER-II

### ANALYSIS OF EXISTING LAWS

#### Article 21 Right to life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law".

Human trafficking is a violation of the fundamental right to live a life with dignity and without exploitation. Human trafficking for organs involves coercion, fraud, exploitation of poverty and forced removal of organs. Right to health is a basic fundamental right under article 21. Forced organ removal may result in permanent health damage and psychological trauma.

#### Article 23 - Prohibition of Trafficking and Forced Labour

The honourable supreme has interpreted that buying and selling of persons for organs like commodities is a violation of fundamental rights under article 23. Commercial sale of organs by coercion or fraud is nothing but constitutional trafficking under article 23.

#### Human Trafficking Laws under Bharatiya Nyaya Sanhita (BNS), 2023

The Bharatiya Nyaya Sanhita, 2023 (BNS) replaces the Indian Penal Code (IPC), 1860.

#### Section 143 – Trafficking of Person

Any person who commits human trafficking by fraud, coercion, abduction, threat, deception, abuse of power or inducement for removal of organs is punishable with minimum 7 years imprisonment which may extend up to life imprisonment if the victim is more than one or a child, or public servant. If the victim is a child there is no need to prove fraud or coercion, mere transportation for exploitation is suffering to prove the offence.

### Section 144 – Exploitation of Trafficked Person

Whoever knowingly trafficked a person for forced labour, sexual exploitation, organ theft is punishable with rigorous imprisonment not less than 10 years.

### Transplantation of Human Organs and Tissues Act, 1994 (THOTA)

This act regulates illegal removal, storage, and transplantation of organs and tissues.

### Section 19 Punishment for Commercial Dealing in Organs

Any person makes or receives payment for supply of organ, or advertises organ sale or acts as a broker or mediator for organ sale is punishable with minimum 5 years imprisonment which may extend upto 10 years imprisonment or fine of minimum 20 lakhs which may extend upto 2 crore or both.

### Section 18 Punishment for Removal of Organ without Authority

If any person removes any organ without proper authority or valid concern is punishable with imprisonment upto 10 years or fine upto 20 lakhs or both.

If a medical professional is involved in illegal organ trade removal of name from medical register.

### Section 20 Punishment for Hospitals

If a hospital violates the rules in the act for organ transplantation, hospital is punishable with penalties and cancellation of registration and also prohibited from conducting transactions.

## CHAPTER-III

## ISSUES IN THE ANALYSIS OF HUMAN TRAFFICKING

### i) Under reporting

Victim's fear of threat to their families if they report about the traffickers to the authorities. Traffickers may threaten the victims that they will be arrested by authorities if they report the issue. Victims are deported from one state to

another and there is lack of ability to communicate their situation to authorities due to language issues. So, many cases go unregistered which results in insufficient data collection.

### ii) Hidden Nature of Crime

Most of the human trafficking occurs anonymously making it harder to detect them. Human trafficking cases are frequently misclassified as missing persons or smuggling. The law enforcement authorities lack proper sections to record human trafficking.

### iii) Poor Implementation

There are multiple laws which talk about human trafficking and there is poor implementation of these laws due to weak investigation which results in low conviction rates.

### iv) Ethical Issues in Research

Victim's fear of retraumatization and confidential reasons are the main barriers in the research of human trafficking. Victims do not disclose their sufferings due to patriarchal norms of normalising exploitation. Since rehabilitation programmes and victim compensation schemes are not properly monitored, there are policy and institutional gaps which are obstacles in the research.

## CHAPTER-IV

## ROLE OF JUDICIARY IN HUMAN TRAFFICKING

### 1. Anil Kumar v. NCT of Delhi (Kidney Racket Case, 2008) (AIR 2018 SC 1057)

#### Facts:

This case talks about the poor and vulnerable people who were coerced into selling kidneys in a kidney trafficking racket operating in Delhi. Fake documents and false relationships were forged to record the donation as one towards a "near relative". Hospital and middlemen were also involved. Anil Kumar is the key accused who was alleged to be part of the racket facilitating illegal organ transplants for monetary gain.

**Legal Issues Involved:**

- a. Whether the accused was involved in commercial dealing with human organs.
- b. Whether the donor's consent was obtained through fraud or coercion
- c. Whether procedures violated mandatory requirements under THOTA act (1994).

**Judgement:**

The Honourable Supreme Court held that:

- a. Human trafficking for organ theft is a serious violation under Article 21- Right to Life and Personal Liberty
- b. Consent obtained through fraud is punishable under section 420 of IPC – Cheating and Section 120B – Criminal Conspiracy
- c. Commercial sale of organs is unethical under transplantation laws, the accused were convicted under Section 9, 19 and 20 of Transplantation of Human Organs and Tissues Act, 1994

**Significance:**

This is a landmark judgement which recognized human trafficking for organs is a form of human exploitation. There is an intersection between poverty and organ trade. It reinforced the link between organ trade and human trafficking.

**2. State of Haryana v. Amit Kumar & Ors (2017) SCC OnLine SC 1142 (AIR 2017 SC 2625)****Facts:**

An illegal kidney transplant racket in Gurugram (2008) was operated by Dr. Amit

Kumar and associates where poor labourers were induced to sell kidneys. Forged documents were created to show the donors as "near relatives". The recipients involved were foreigners.

**Legal Issues Involved:**

- a. Whether the accused engaged in commercial dealing in human organs (Section 19 THOTA).

- b. Whether donor's consent was obtained through fraud and coercion.
- c. Whether fake documentation constituted forgery and conspiracy under IPC.

**Judgement:**

The Honourable Supreme Court held that:

- a. Commercial dealing of human organs is strictly prohibited under Section 19 of THOTA, 1994.
- b. "Conset" obtained through inducement, poverty, deception and fabricated relationships are invalid and illegal.
- c. Preparation of false documents comprises forgery and criminal conspiracy under IPC.

**Significance:**

This case is one of India's largest organ trafficking convictions and exposed loopholes present in Authorization Committee oversight. It highlighted organ trade as an organized exploitation of the unfortunate.

**3. Mukesh Gandhi v. Deputy Secretary Medical Education and Research (2009) (AIR 2009 Bom 137)****Facts:**

The petitioner was refused permission for organ transplantation as the Authorization Committee denied approval of kidney donation for non-relatives. This issue was based on the interpretation of THOTA provisions.

**Legal Issues Involved:**

1. Whether strict scrutiny is required for non-relative donors.
2. Whether protection is guaranteed against commercial organ trade.

**Judgement:**

The Honourable Supreme Court held that:

- a. The strict powers of scrutiny that the Authorization Committee has are under Section 9 THOTA.

b. When the donor is not a near-relative, the committee must ensure the absence of commercial transactions and verify the financial background of relatives to eliminate the chances of exploitation.

c. Dilution of permissible safeguards merely because the donor and recipient claimed consent is not permitted.

**Significance:**

This case clarified the powers and responsibilities of Authorization Committees by reinforcing strict regulatory requirements and strengthened the framework for anti-commercialization of organ trading.

**4. Jeewan Kumar Raut v. CBI (2009) (AIR 2009 SC 2763)**

**Facts:**

Illegal kidney transplant operations in Mumbai resulted in this case and the CBI investigated the violations of THOTA. The accused challenged prosecution involved under the Act.

**Legal Issues Involved:**

3. Whether offences under THOTA are cognizable.

4. Whether prior sanction is necessary for prosecution.

**Judgement:**

The Honourable Supreme Court held that:

a. Cognizance of offences under THOTA can be taken only on a complaint made by the Appropriate Authority, or a person authorized by the Central or the State Government.

b. A CBI report cannot by itself form the basis for taking cognizance, unless the statutory requirement under Section 22 is fulfilled.

c. THOTA is a special statute, therefore its procedural requirements override general CrPC provisions.

**Significance:**

This case is a landmark Supreme Court ruling interpreting THOTA that clarified the procedural aspects of organ trafficking prosecution and strengthened enforcement mechanisms.

**5. Vidhya Ramesh Chand Shah v. State of Gujarat (AIR 2013 Guj 145)**

**Facts:**

Allegations of illegal kidney transplantation arose against the accused and dispute over compliance of THOTA procedures led to the questioning of authorization and consent.

**Legal Issues Involved:**

a. Whether transplant approval complied with Section 9 THOTA.

b. Whether consent was genuine.

c. Whether liability of medical practitioners is involved.

**Judgement:**

The Honourable Supreme Court held that:

a. Organ transplantation involving non-relatives requires strict compliance with Section 9 THOTA.

b. The Authorization Committee must independently verify voluntariness and absence of financial inducement.

c. Any violation of statutory requirements can attract criminal liability.

**Significance:**

This case strengthened the accountability to be held by hospitals and doctors and asserted that medical necessity cannot overrule statutory restrictions. It enhanced the involvement of judicial scrutiny in organ transplant procedures.

**CHAPTER-V**

**EMPIRICAL ANALYSIS & FINDING**

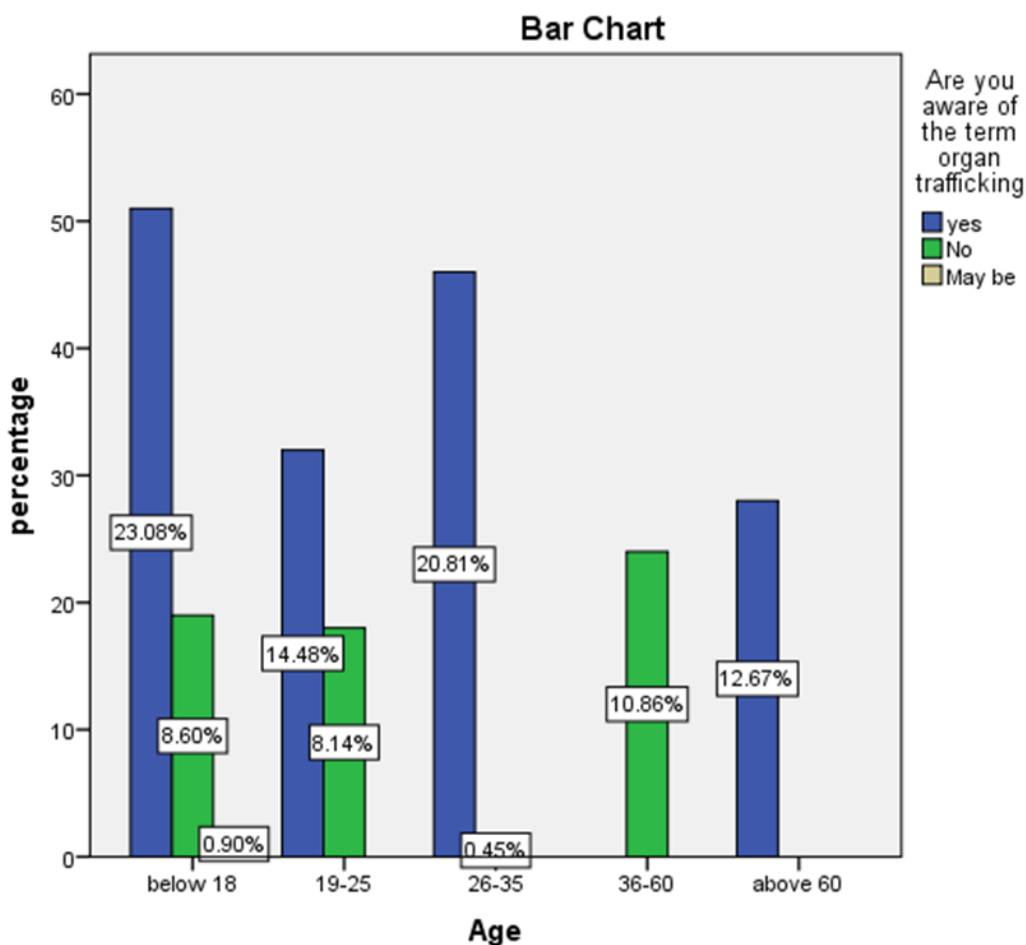
Empirical analysis is used to obtain real-world data rather than relying solely on theoretical or legal sources. This method helps the author understand public awareness, opinions and attitudes regarding organ trafficking and related issues.

The study uses a non-doctrinal approach using primary and secondary sources. Primary sources of data collection include surveys and questionnaires which are used to capture respondent awareness and opinions regarding organ trafficking. Secondary sources of data collection include books, academic articles and journals to provide conceptual, theoretical and background understanding.

A sample size of 222 respondents is taken and participants were selected based on accessibility and willingness to respond. The participants consisted of a diverse group who varied across age groups, gender categories, educational backgrounds and income levels to support broader interpretation of awareness and perceptions.

The statistical data collected is analysed using graphical representations to allow easy comparison of responses and simplify presentation of findings.

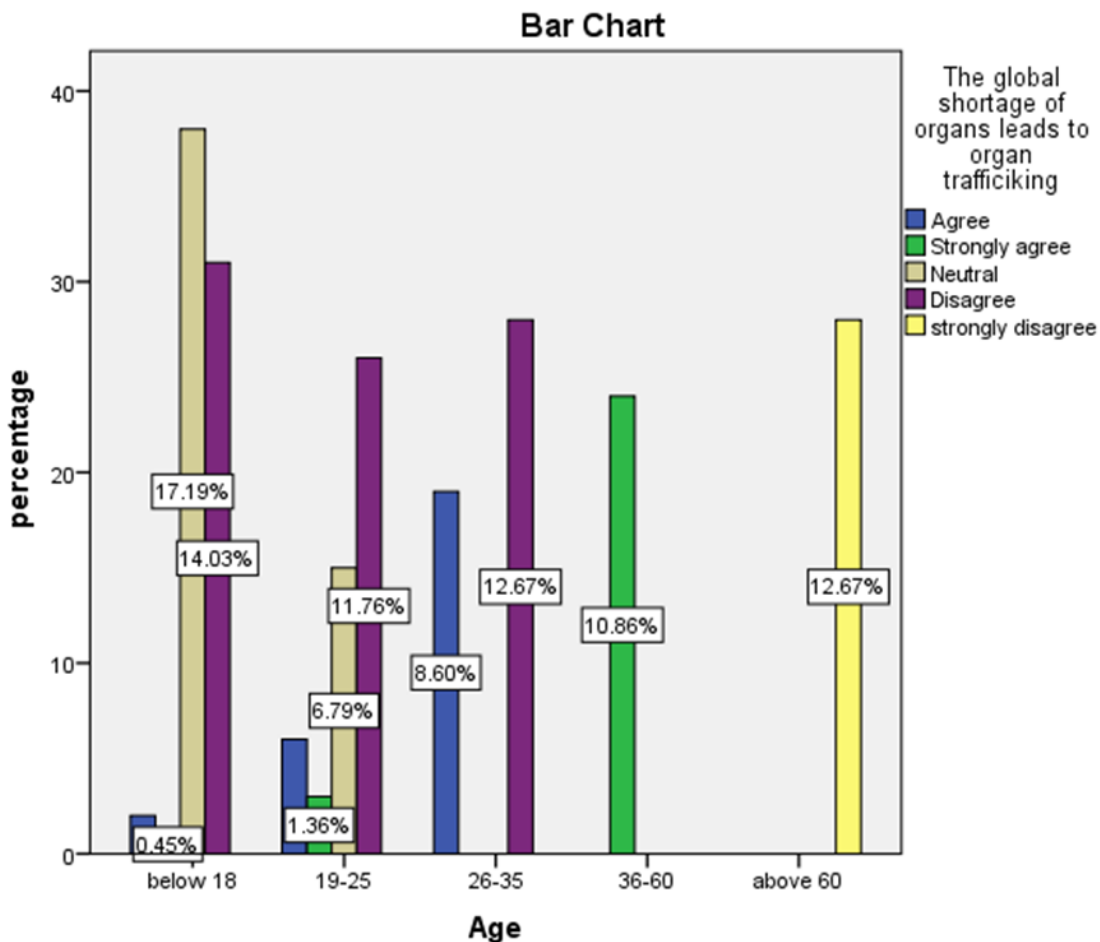
**Figure 1:**



The graph shows that a significant percentage of respondents, especially those under the age of 18, said they were familiar with the term "organ trafficking." This implies that even younger participants have a basic understanding of organ trafficking, which is consistent with their increased exposure to

information about the problem. Age-group differences, however, suggest that awareness is not evenly distributed.

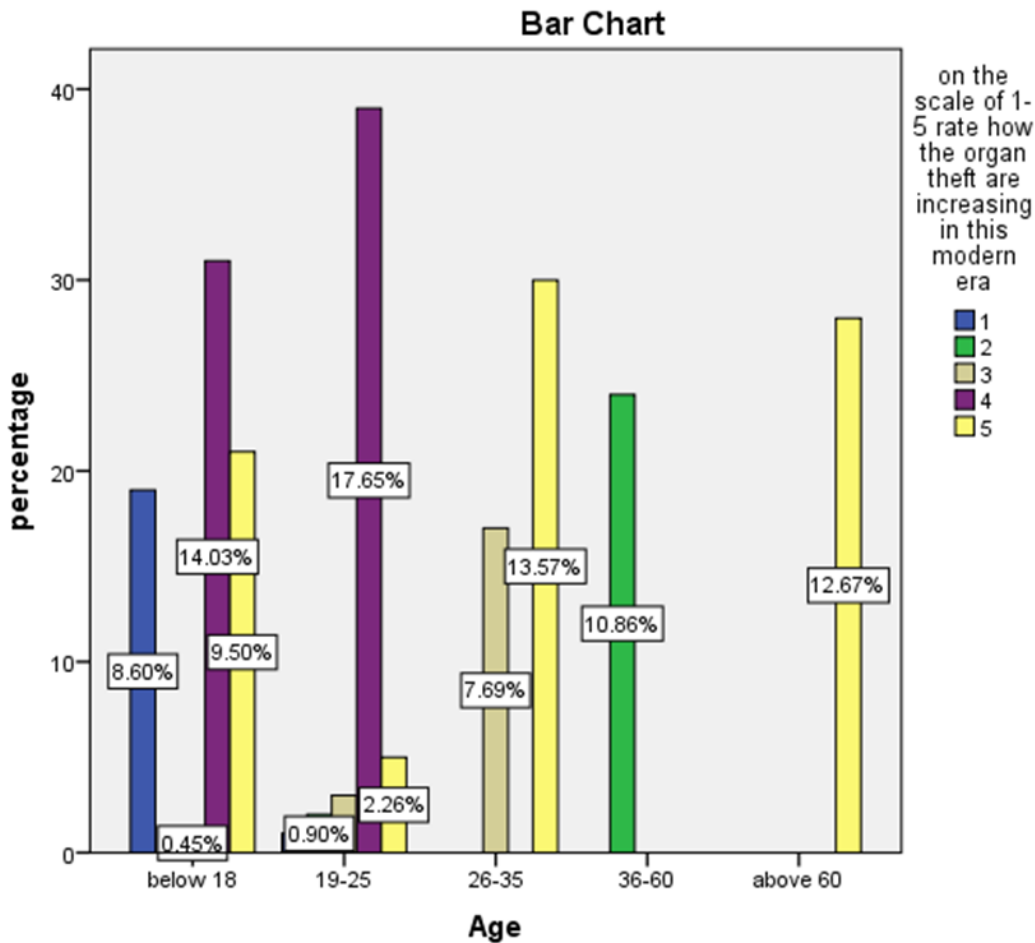
**Figure 2:**



The figure illustrates varying opinions among age groups about whether organ trafficking is a result of the worldwide organ shortage. A sizable portion of younger respondents had neutral opinions, suggesting a lack of clarity or understanding regarding the causal relationship. This emphasizes the necessity of more thorough public education regarding the systemic causes of organ trafficking.



Figure 3:



According to the graph, most respondents gave the rise in organ theft higher ratings on the scale, particularly those in the 19-25 age range. This is in line with young adults' general belief that organ theft is on the rise in the contemporary era. The way trafficking and the illegal organ trade are portrayed in the media and in society may have an impact on these reactions.

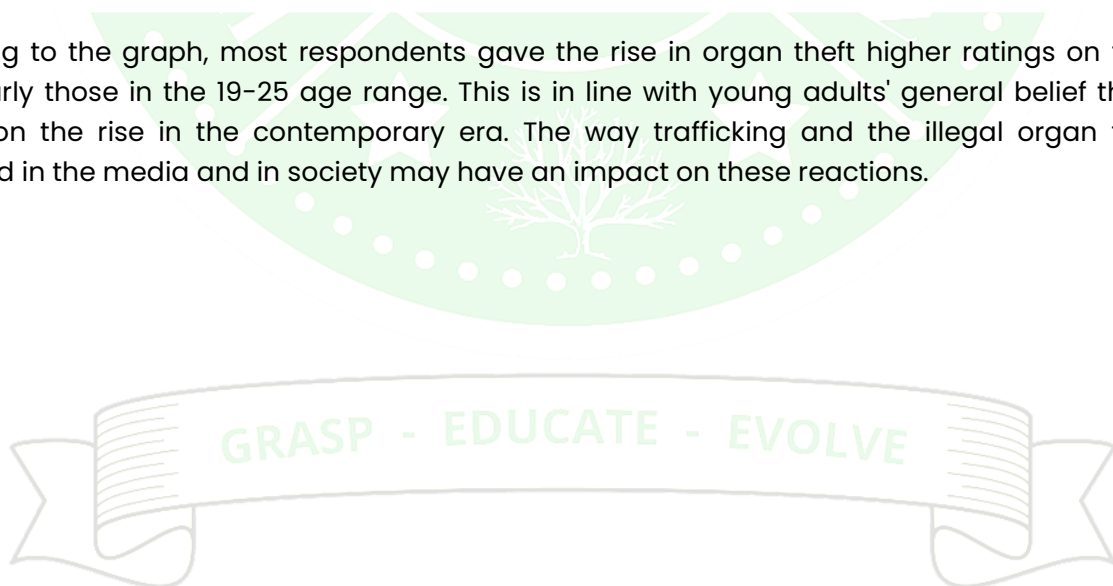
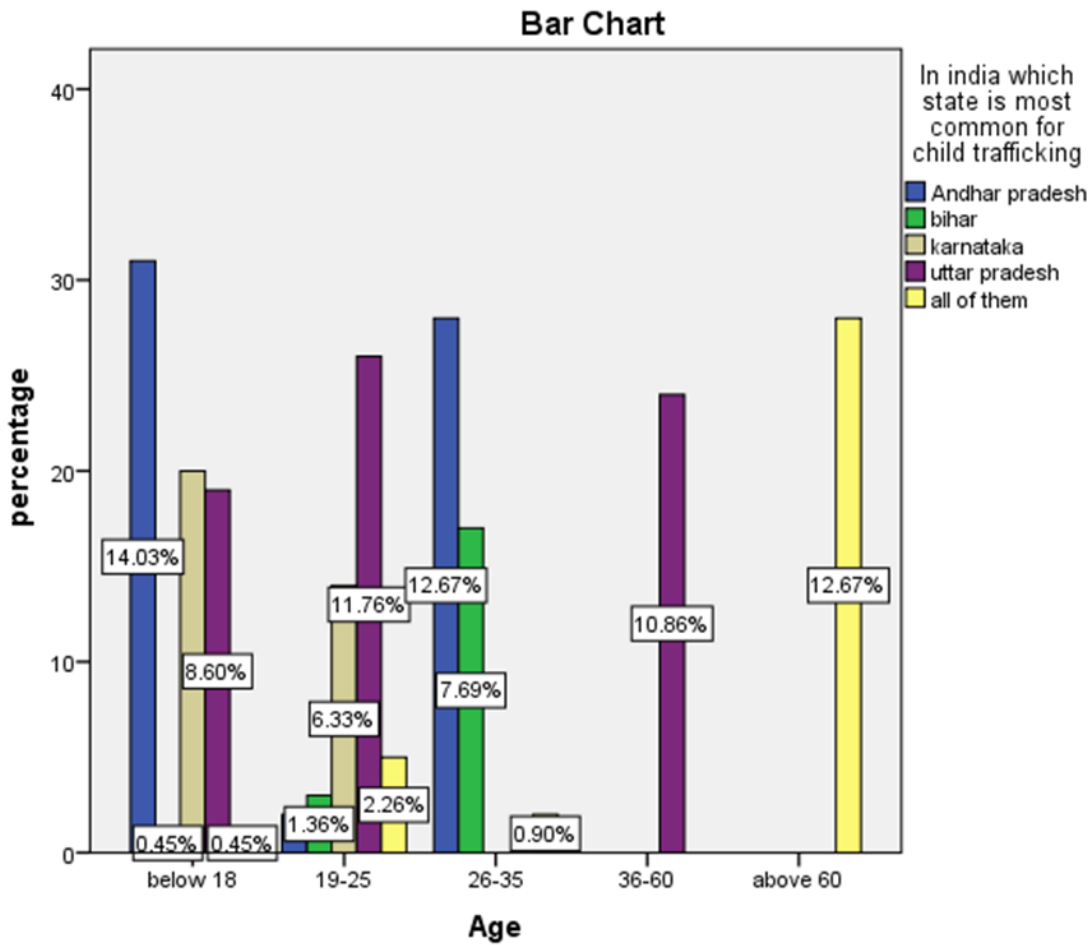


Figure 4:



The results indicate that the data shows that the respondents believe that certain states have a higher prevalence of child trafficking. The younger respondents were able to point out the states, which shows that there is a perceived regional distribution of child trafficking.

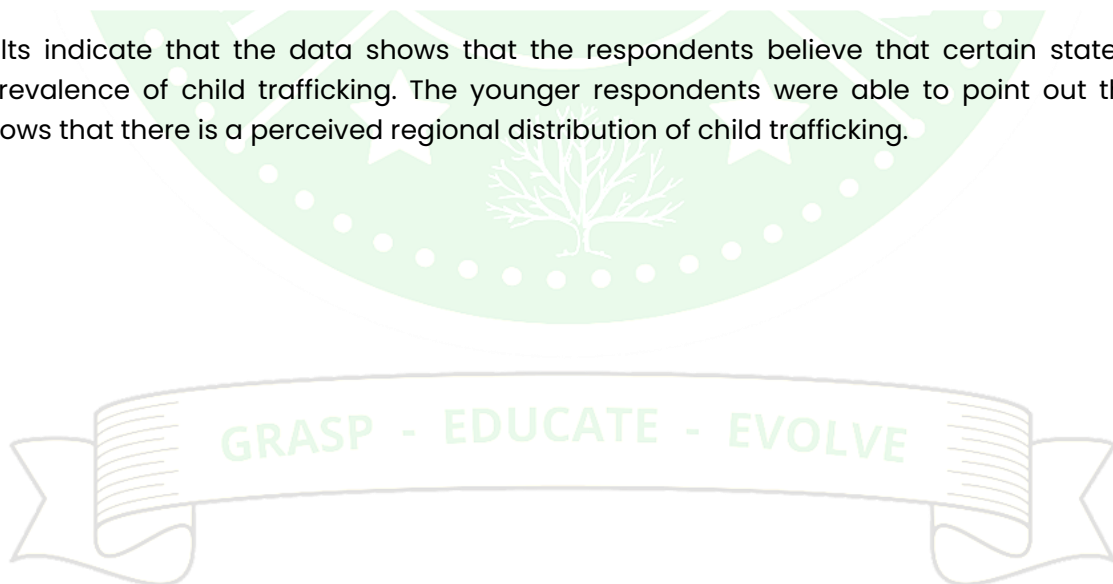
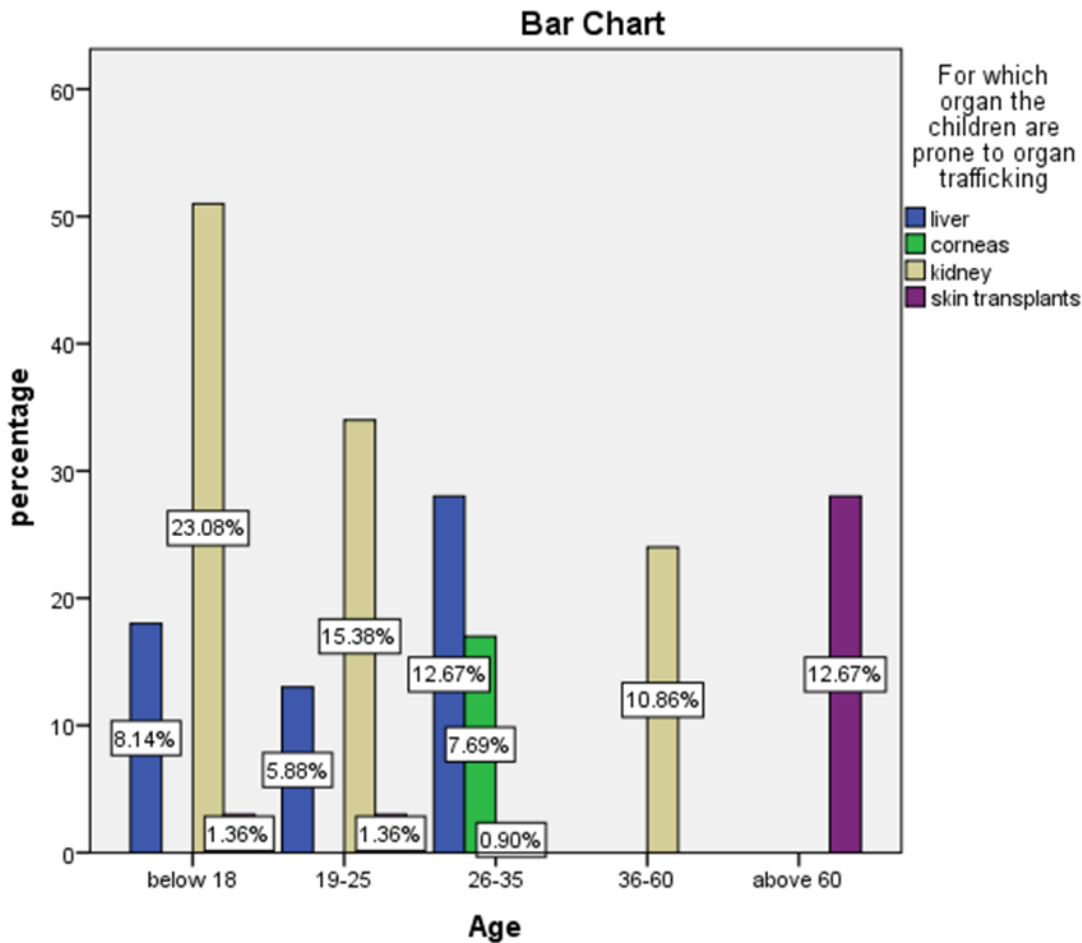


Figure 5:



From the graph, it is evident that a considerable number of participants, especially among the younger generation, identified the kidney as the organ most commonly associated with child organ trafficking. This is not surprising, given the well-known demand for kidneys in the illegal transplant trade.

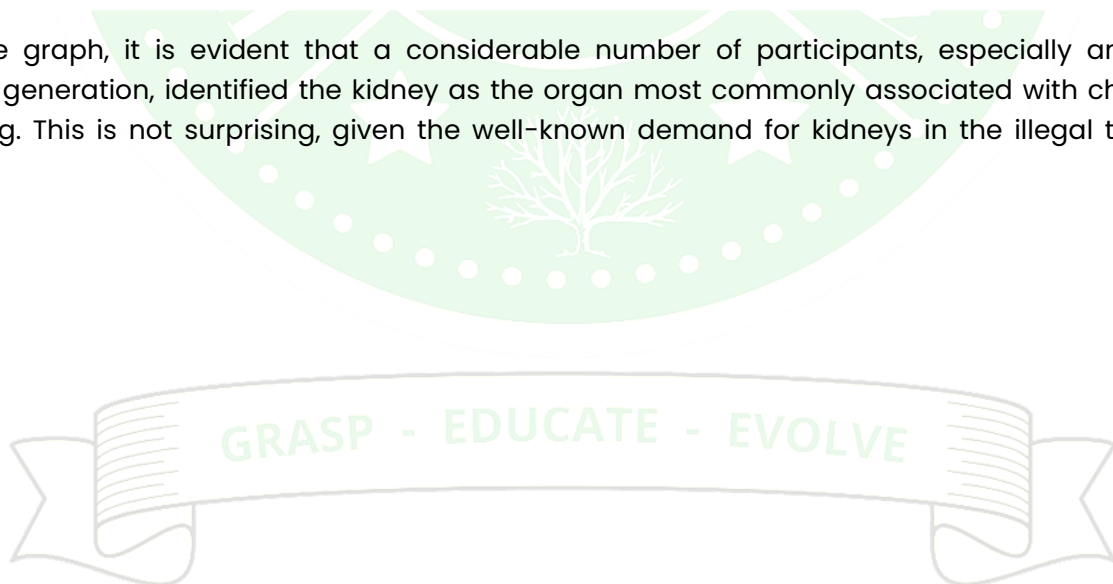
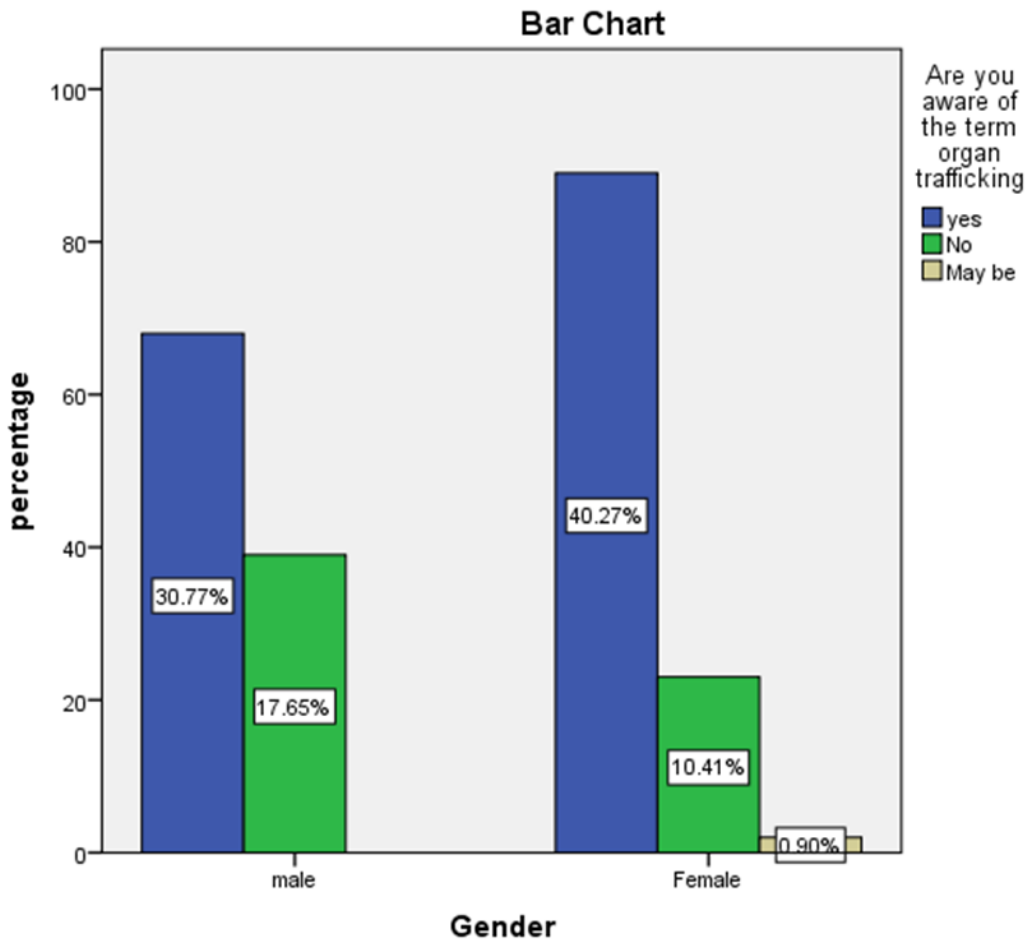


Figure 6:



The graph above shows the differences in the levels of awareness based on gender in relation to organ trafficking. A relatively higher proportion of female respondents reported their awareness of the term, which may indicate a difference in exposure or perception of information.

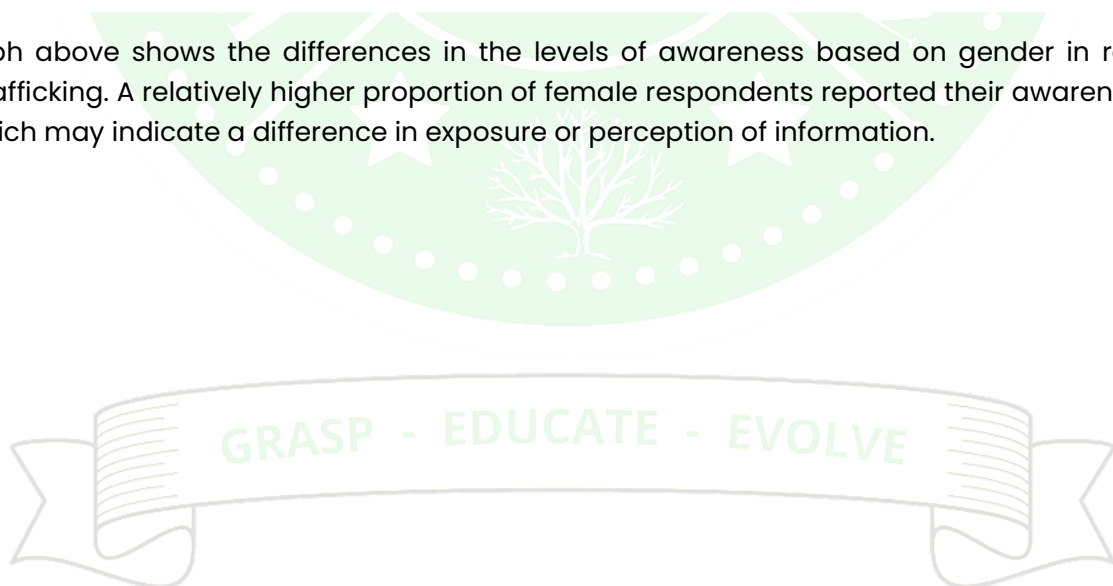
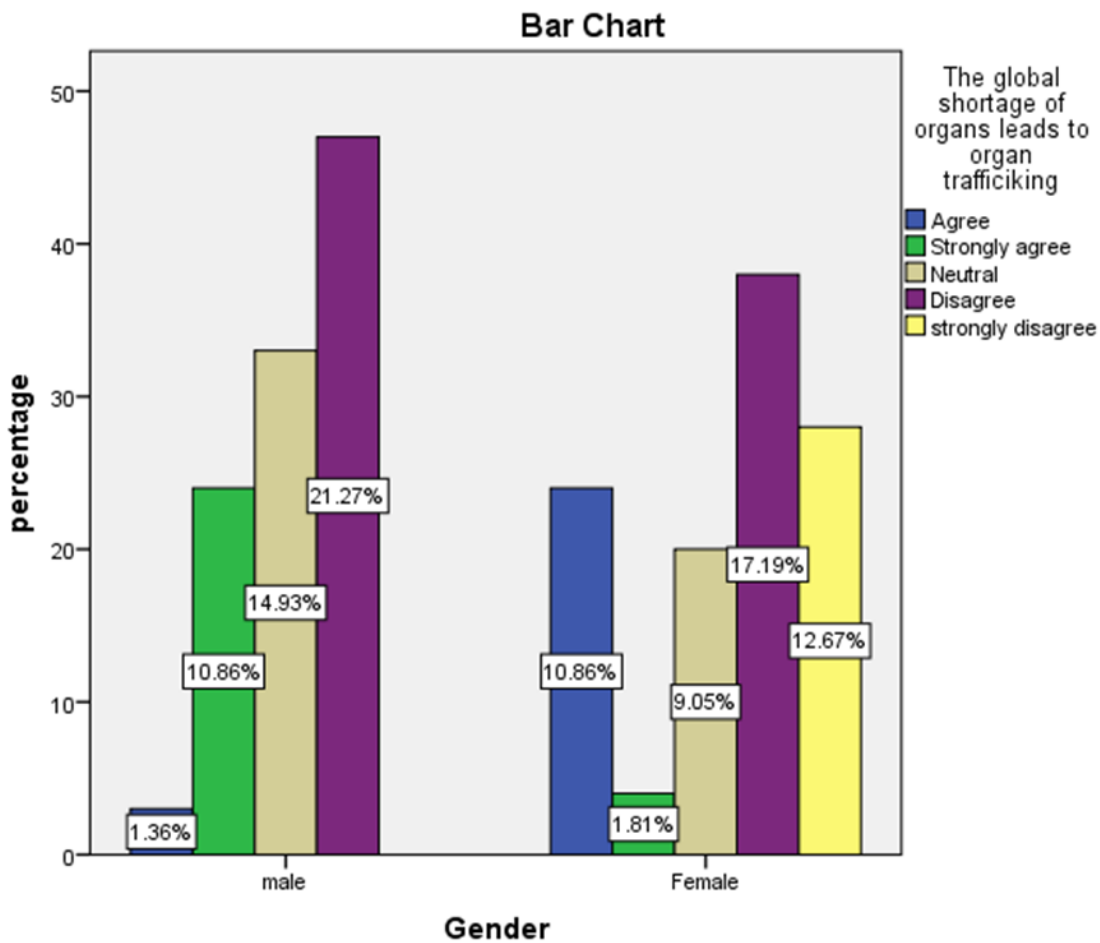


Figure 7:



The graph represents the varied opinions among the gender categories regarding the issue of organ trafficking and the shortage of organs globally. Some people agreed with the statement, while others disagreed or remained neutral. The distribution of the opinions indicates that people have different views on the systemic cause of organ trafficking.

**One-way ANOVA:**

ANOVA is used to examine whether demographic variables such as age and gender have a significant impact on perceptions regarding child trafficking for organ theft.

**ANOVA**

the global shortage of organs leads to organ trafficking

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	134.246	4	33.562	39.445	.000
Within Groups	182.931	215	.851		
Total	317.177	219			

**Null Hypothesis:** There is no significant relationship between demographic variables and perceptions regarding child trafficking for organ theft.

**Alternative Hypothesis:** There exists a significant relationship between demographic variables and perceptions regarding child trafficking for organ theft.

The significance value is .000, so we reject the null hypothesis. We conclude that there exists a significant relationship between demographic variables and perceptions regarding child trafficking for organ theft.

### CONCLUSION & SUGGESTIONS

The empirical findings indicate that a significant proportion of respondents demonstrate a basic awareness of organ trafficking, though perceptions regarding its causes, prevalence and patterns vary. A majority of respondents associate organ trafficking primarily with kidney demand and child vulnerability. The responses also suggest many participants believe that organ trafficking is increasing in the modern era, highlighting the growing concern of the public regarding the issue. Respondents believe that socio-economic factors are linked to trafficking risks. Comparative understanding and literature indicate that organ trafficking is not purely a criminal issue but is deeply connected to poverty, organ shortages, healthcare inequality, and organized networks.

As empirical evidence indicates, there is partial awareness and misconception, and thus awareness programs should be put in place to enhance legal and social literacy about organ trafficking risks. Considering the vulnerability of children, it is important to have child protection mechanisms, surveillance of missing children cases, and inter-state coordination. In the long run, it is important to address the underlying causes of organ trafficking, such as poverty, unemployment, and organ shortage, rather than punitive measures. Organ trafficking involves inter-state networks, and thus it is important to have coordinated efforts from law enforcement agencies, healthcare regulators, and state authorities.

Thus, this study underscores that organ trafficking and child exploitation represent not only a legal violation but a profound human rights and social justice concern. Effective mitigation demands a holistic approach

combining legal reform, institutional accountability, public awareness, and socio-economic intervention. Strengthening these dimensions will contribute meaningfully to protecting vulnerable populations and reinforcing the integrity of the legal and healthcare systems.

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