SCOPE FOR CONSIDERATION OF HUMAN BLOOD – AS AN EXTENSION TO ORGANS - AS PRIVATE PROPERTY: AN ANALYSIS ON THE LEGAL APPLICABILITY, MERITS AND FEASIBILITY

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ABSTRACT

This paper examines the paradigm shift regarding the legal status of human blood, questioning whether it should transcend its current characterization as a mere public resource or res nullius and be legally recognized as private property. Traditionally governed by altruistic frameworks to prevent exploitation, the current legal architecture creates an economic paradox: while donors are legally prohibited from receiving compensation under a strict non-commercialization regime, healthcare institutions and blood banks routinely monetize blood products through processing, storage, and cross-matching fees, which often escalate significantly for rarer blood types. This study investigates this asymmetry by examining foundational jurisprudence, including the doctrine of "no property in a corpse" and its evolution through Doodeward v. Spence, alongside contemporary bio-property landmarks such as the American case of Moore v. Regents of the University of California. Within the Indian context, the paper analyzes the regulatory constraints imposed by the Transplantation of Human Organs and Tissues Act (THOTA), 1994, and the Drugs and Cosmetics Act, 1940, while exploring constitutional dimensions under Articles 21, 23, and 300A of the Constitution of India. Comparing these frameworks with international approaches, this paper evaluates the judicial precedents governing bodily autonomy and commercialization. It highlights the systemic problems of the current regime—including black-market exploitation and pricing disparities—and advocates for a hybrid "regulated property" model that guarantees equitable donor recognition, fair compensation, and strict price caps to ensure distributive justice in healthcare delivery.

Keywords: res nullius, private property, autonomy, commercialization, Ownership, Right to life & Liberty, Morality, Exploitation.

I. INTRODUCTION

The intersections of medicine, commerce, and human rights have continuously forced legal frameworks to re-examine the boundaries of the term "property." Among various biological materials, human blood occupies a uniquely contested position. On one hand, it is an absolute biomedical necessity for which no synthetic substitute exists; on the other, it remains intrinsically bound to the physical and personal identity of an individual. For decades, global and domestic legal regimes have treated blood donation through an entirely altruistic lens, viewing the commercialization of human tissue as a profound ethical violation and a threat to public health. This philosophy is rooted in the fear that a market-driven approach to bodily fluids would lead to the systematic exploitation of economically marginalized populations, turning their bodies into commercial commodities.

To map out how biological materials came to be viewed by the law, its philosophical origin must be traced back to early common law and how it interacted with emerging societal demands. In seeking a balanced perspective that moves away from pure moralism toward practical necessity, legal scholarship often turns to the seminal work of Glanville Williams, The Sanctity of Life and The Criminal Law[1]. Williams famously adopted a deeply pragmatic approach rather than a theology-based framework to evaluate how the law should meet modern biomedical needs.[2]He argued that law must be shaped by sociological and biological realities rather than rigid metaphysical concepts of natural law, suggesting that even bodily items like hair or semen can be subject to standard transactivity without an inherent moral wrong[3].

However, Williams' highly utilitarian and pragmatic view has drawn sharp criticism from theological and deontological scholars. Critics like Anthony F. LoGatto argue that a purely pragmatic separation of the body into functional or commercial units reduces human society to a "well-run farm" where human components are treated as mere bred stock, stripping away the spiritual dignity and supernatural sanctity inherent to human life[4]. Furthermore, other legal and ethical frameworks caution against separating bodily parts from personhood, warning that a

[1] GLANVILLE WILLIAMS, THE SANCTITY OF LIFE AND THE CRIMINAL LAW 69 (Alfred A. Knopf 1957).
[2] Ibid.
[3] Ibid at 101
[4] Anthony F. LoGatto, The Sanctity of Life and the Criminal Law, 4 CATH. LAW. 185, 185-186 (1958)

purely pragmatic approach opens the door to widespread exploitation of the vulnerable[5].

Despite these ideological battles, the altruistic orthodoxy governing human blood today has created a glaring systemic asymmetry in Indian jurisprudence. While the law mandates that the donor must part with their blood out of pure benevolence, without any expectation of material or financial reciprocity, the subsequent supply chain is intensely commercialized. Medical facilities, private blood banks, and pharmaceutical corporations charge substantial amounts under titles such as "processing fees," "operational overheads," and "administrative costs." This economic discrepancy becomes particularly pronounced in cases involving rare blood phenotypes, where the market laws of supply and demand drive up the end-user costs exponentially, despite the original donor receiving zero financial benefit.

Consequently, this paper addresses a fundamental legal and economic question: Should human blood be recognized as the private property of the individual from whom it is drawn, thereby granting them ownership rights, control, and a right to fair compensation? By examining the historical evolution of bodily property rights, analyzing the legislative barriers in Indian law, and evaluating international precedents, this paper seeks to map out a legally sound and ethically responsible framework that recognizes individual property rights in blood while preventing the predatory exploitation of vulnerable populations.

II. BACKGROUND & HISTORY

A) Haynes's Case (1614): Sir Edward Coke and the Genesis of Res Nullius

The foundational baseline of the "no property" rule at common law originated in the seventeenth century with *Haynes's Case*[6]. The defendant, William Haynes, disinterred several graves and stole the winding sheets, or shrouds, wrapped around the dead bodies.

This scenario presented a unique legal dilemma for the court: to satisfy the statutory requirements of larceny, the prosecution had to prove that the stolen goods were the personal property of a legal entity. Sir Edward Coke determined that while the shrouds could be the subject of theft because they belonged to the executors of the deceased's estate, the corpses

[5] Paul J. Micallef, Abortion and the Principles of Legislation, 28 Laval Theologique Et Philosophique 267, 267 (1972).
[6] *Haynes's Case*, (1614) 12 Co Rep 113.

themselves could not be stolen because a dead body belongs to no one (*res nullius*)[7].

By ruling that a human body was of ecclesiastical cognizance rather than temporal law, Lord Coke established an enduring common law doctrine. This framework effectively placed the human body outside the realm of commercial markets and property law, establishing a legal baseline that would endure for centuries.

B) R v. Sharpe (1857): Solidifying the Secular "No Property" Rule

As the common law transitioned into the nineteenth century, secular courts were forced to codify and enforce these ecclesiastical boundaries. In *R v. Sharpe*, the defendant exhumed his mother's remains from a burial ground without legal authority, driven by a desire to reinter her alongside his recently deceased father[8].

The legal question before the court was whether unauthorized exhumation, even when motivated by genuine familial piety, constituted a criminal offense under secular common law. The court firmly rejected any familial or emotional claim to the physical remains, holding that even well-intentioned exhumations without a proper license constituted a misdemeanor[9].

This decision explicitly cemented the secular rule that a corpse is not property and cannot be the subject of private ownership or larceny at common law. This reinforcement ensured that human remains were legally insulated from possessory disputes, prioritizing public reverence and public health over personal or commercial claims.

C) Doodeward v. Spence (1908): The Birth of the "Work or Skill" Exception

The static *res nullius* paradigm faced its first major rupture in the early twentieth century due to medical curiosity and anatomical preservation. In the landmark Australian case of *Doodeward v. Spence*, a physician had preserved the corpse of a two-headed stillborn child in spirits[10]. After the doctor's death, the specimen was sold to an entertainer who exhibited it, until it was eventually seized by a police inspector. The plaintiff subsequently brought an action in

[7] Ibid. See also 3 Inst. 110, where Sir Edward Coke notes that "the burial of the cadaver is governed by the law ecclesiastical."
[8] *Regina v. Sharpe*, (1857) Dears & B 160.
[9] Ibid. at 163.
[10] *Doodeward v. Spence*, (1908) 6 CLR 406 (Austl.).

detinue to recover possession of the specimen.

The High Court of Australia was forced to decide a novel question: if a corpse cannot be property under traditional common law, could anyone lawfully claim a right to possess or own an anatomically preserved human body part? Chief Justice Griffith established a monumental exception to the *res nullius* rule, holding that when a person has by the lawful exercise of work or skill so dealt with a human body or part of a body in his lawful possession that it has acquired some attributes differentiating it from a mere corpse awaiting burial, he acquires a right to retain possession of it[11].

This case birthed the "work or skill" exception. It introduced a critical legal asymmetry into jurisprudence: while raw biological material remains unownable inside the body, any medical professional or institution that applies labor, chemical preservation, or scientific processing can legally claim a possessory or property interest in that material.

D) Moore v. Regents of the University of California (1990): De-linking Autonomy from Property

The modern biotechnological revolution pushed this legal asymmetry from deceased corpses to living biological tissue. In *Moore v. Regents of the University of California*, John Moore was treated for hairy-cell leukemia at an institutional medical center[12]. His attending physician realized that Moore's T-lymphocytes were highly unique and carried immense commercial and therapeutic potential. Without Moore's knowledge, researchers utilized his excised spleen and blood samples to develop and patent a cell line valued at billions of dollars[13]. Upon discovering this, Moore filed a lawsuit alleging the tort of conversion, which fundamentally requires an unauthorized deprivation of an individual's property rights.

The Supreme Court of California rejected Moore's conversion claim, holding that an individual does not retain a property right in their excised cells or bodily fluids[14]. The court explicitly split bodily autonomy—which it protected via the doctrines of informed consent and fiduciary duty—away from property law. The majority rationale asserted that the patented cell line was a distinct product of human ingenuity and scientific labor, separate from Moore's raw

[11] Ibid. at 414.
[12] *Moore v. Regents of the University of California*, 51 Cal. 3d 120 (1990).
[13] Ibid. at 127.
[14] Ibid. at 135.

materials[15].

To protect scientific research from a "chilling effect," the court legally barred the tissue source from accessing the downstream economic value of their own body parts. At the same time, it validated the full bundle of property rights for commercial researchers, cementing a framework where biological tissue can become property in the hands of everyone except the person who produced it.

E) R v. Kelly (1998): Codifying the Work or Skill Doctrine into Criminal Law

At the close of the twentieth century, the English Court of Appeal formally integrated the *Doodeward* exception back into the United Kingdom's criminal framework in *R v. Kelly*[16]. Anthony-Noel Kelly, an artist, convinced a laboratory technician to remove a number of human body parts from the Royal College of Surgeons so he could use them to create artistic casts. Kelly was subsequently prosecuted for theft.

The legal defense argued that Kelly could not be convicted of theft because, under the long-standing rule solidified in *R v. Sharpe*, a corpse and its parts are not property and therefore cannot be stolen under the Theft Act[17]. The Court of Appeal rejected this defense and explicitly codified the "work or skill" exception into English criminal law. The court held that parts of a human corpse are capable of becoming property if they have undergone an application of human skill, such as dissection, chemical preservation, or preparation for medical or scientific exhibition[18].

This decision closed the loop on the historical evolution of this concept. It demonstrated that human tissue transitions from a state of *res nullius* into actionable, legally protected property the exact moment an institution applies technical skill to it.

III. LEGISLATIVE FRAMEWORKS IN INDIA & CONSTITUTIONAL DIMENSIONS

A. Statutory Restrictions: THOTA and the Drugs & Cosmetics Act

[15] Ibid. at 143.
[16] *Regina v. Kelly*, [1999] QB 621.
[17] Ibid. Also Theft Act, 1968, c. 60, § 4 (UK).
[18] Supra note 16 at p631.

In India, the legal framework governing human tissue and fluids is strictly non-commercial, though structurally fragmented. The primary legislation governing the donation and transplantation of bodily parts is the Transplantation of Human Organs and Tissues Act (THOTA), 1994 (subsequently amended in 2011 and 2014)[19]. THOTA was enacted explicitly to curb the rampant black market in human organs, particularly kidneys. Section 18 of THOTA criminalizes any commercial dealings in human organs and tissues, prescribing stringent imprisonment and financial penalties[20].

More specifically, human blood is regulated under an entirely separate regime: the Drugs and Cosmetics Act, 1940[21]. Under Section 3(b) of this statutory framework, human blood is legally classified as a "drug"[22]. Consequently, the collection, storage, processing, and distribution of blood and blood components require mandatory licensing from the Drugs Controller General of India (DCGI).

This dual legislative coverage creates significant jurisdictional complications. Biologically and functionally, blood is essentially a liquid connective tissue rather than a synthetic chemical drug. By squeezing blood into the definition of a "drug" under the Drugs and Cosmetics Act while concurrently regulating general human tissues under THOTA, the statutory architecture leaves severe gaps in oversight. This overlapping jurisdiction fragments accountability between drug controllers and tissue transplant authorities.

Following the landmark Supreme Court ruling in Common Cause v. Union of India[23], the legal framework underwent an aggressive overhaul. In this case, the Supreme Court took judicial notice of the appalling conditions of private commercial blood banks, which routinely exploited professional, impoverished donors—often drug addicts or severely malnourished individuals—resulting in the widespread transmission of blood-borne pathogens like HIV and Hepatitis B. The Court directed the immediate banning of professional, paid blood donation systems across India[24]. Today, the law only permits voluntary, non-remunerated blood donation. This legal classification ensures that blood remains legally decoupled from commerce at the source,

[19] Transplantation of Human Organs and Tissues Act, 1994, No. 42, Acts of Parliament, 1994 (India).
[20] Transplantation of Human Organs and Tissues Act, 1994, § 18, No. 42, Acts of Parliament, 1994 (India).
[21] Drugs and Cosmetics Act, 1940, No. 23, Acts of Parliament, 1940 (India).
[22] Drugs and Cosmetics Act, 1940, § 3(b), No. 23, Acts of Parliament, 1940 (India).
[23] Common Cause v. Union of India and Anr., (1996) 1 SCC 753, 755.
[24] Ibid. at 760.

reinforcing its status as a public resource rather than a private asset.

B. Constitutional Perspectives: Articles 21, 23, and 300A

The proposition of classifying blood as private property requires a deep structural harmony with the Constitution of India. This intersects significantly with three constitutional provisions:

Article 21 (The Right to Life and Personal Liberty): The Supreme Court of India has consistently expanded Article 21 to encompass bodily autonomy and self-determination. In cases like K.S. Puttaswamy v. Union of India[25], the Court held that informational and bodily privacy are fundamental aspects of human dignity. If an individual has absolute autonomy over their body, it stands to reason that they should have possessory and dispositional rights over their bodily fluids. Prohibiting a person from deriving financial sustenance or demanding compensation for a highly valued asset extracted from their own body can be seen as an arbitrary restriction on personal liberty and dignity, provided it is done safely and voluntarily.

Article 23 (Prohibition of Traffic in Human Beings and Forced Labour): Opponents of the property model frequently cite Article 23,[26] arguing that allowing the commercial sale of blood would amount to a form of "traffic in human beings" or bodily exploitation. However, a nuanced interpretation suggests that Article 23 is designed to prevent unfree or coerced commercialization. If a well-informed, autonomous individual chooses to alienate a renewable bodily fluid (like blood or plasma) for fair compensation, it does not constitute human trafficking; rather, it is an exercise of economic self-determination. In fact, denying any compensation while allowing hospitals to profit off that blood could itself be viewed as an unconstitutional extraction of value without fair return.

Article 300A (The Right to Property): Article 300A mandates that no person shall be deprived of their property save by authority of law[27]. While no longer a fundamental right, property under Article 300A is interpreted widely to include both tangible and intangible assets. If human blood can be legally conceptualized as a personal biological asset, an individual cannot be stripped of their control or economic right over it by state regulations without compelling public interest and just mechanisms. The current regime completely obliterates the donor's

[25] K.S. Puttaswamy and Anr. v. Union of India and Ors., (2017) 10 SCC 1, 12.
[26] INDIA CONST. art. 23, § 1.
[27] INDIA CONST. art. 300A.

economic interest while preserving the corporate entity's right to profit, creating a profound imbalance that directly challenges the spirit of Article 300A.

IV. INTERNATIONAL FRAMEWORK COMPARISON

The varying global approaches to blood ownership illustrate the deep divide between market pragmatism and bodily altruism, showcasing how different legal systems handle the concepts of property and bodily autonomy.

A. The United States: The Dual Track System

The United States provides the most prominent example of a hybrid approach. The US Food and Drug Administration (FDA) distinguishes between two types of blood collection: whole blood and source plasma. Whole blood donation, which is primarily used for direct transfusions in emergency medicine, relies almost entirely on a voluntary, non-remunerated system. Although the law does not strictly ban paying whole blood donors, the FDA requires any blood collected from a paid donor to be explicitly labeled as "Paid Donor Blood." Because hospitals view paid blood as carrying a higher risk of infectious disease and refuse to utilize it, the commercial market for whole blood is effectively non-existent.

Conversely, the market for source plasma (the liquid portion of blood used to manufacture life-saving pharmaceutical therapies and immunoglobulins) is highly commercialized and completely legal. Plasma donors are financially compensated for their time and physical effort. The US has capitalized on this model, becoming the world's primary exporter of plasma-derived medicinal products, supplying over 60% of the global market. This legal track stands in strong alignment with the American stance on bodily autonomy as depicted in the majority opinion of Moore,[28] which favors downstream market utility and innovations over continuous source controls, yet implicitly acknowledges a transactional property right over the physical act of fluid separation.

B. The European Union and the WHO Stance

In sharp contrast, the European Union and the World Health Organization (WHO) strongly advocate for the principle of Voluntary Non-Remunerated Blood Donation (VNRBD). The

[28] Supra note 12 at p144.

WHO's global policy aims for all countries to obtain their blood supplies entirely from voluntary, unpaid donors. This framework is built upon the ethical theory of Richard Titmuss, outlined in his seminal 1970 book The Gift Relationship[29]. Titmuss argued that commercializing blood diminishes the altruistic social fabric, drives down the quality of the supply (as paid donors have a financial incentive to lie about their medical histories), and is less economically efficient than a purely voluntary system.

Most European nations, such as France and the United Kingdom, strictly forbid any form of compensation, treating blood as a public, non-commodifiable resource. This baseline model relies heavily on the classic common-law boundary established during the initial phases of the Doodeward era[30], treating raw biological matter inside the body as res nullius. However, even within Europe, countries like Germany, Austria, and the Czech Republic allow private plasma centers to offer small financial stipends or allowances to plasma donors, acknowledging the pragmatic necessity of financial incentives to meet domestic healthcare demands.

V. JUDICIAL PRECEDENTS AND GROUND REALITY ANALYSIS

A. The Judicial Construction of Biological Value

The central failure of the contemporary judicial apparatus lies in its selective application of property doctrines. Under current jurisprudence, a double standard exists: biological material in its raw state inside the human body is deemed "sacred" and outside the scope of commerce, yet the exact same material becomes an assignable, patentable, and highly lucrative asset once it enters a laboratory or medical inventory[31]. This intellectual inconsistency is visible when analyzing how courts handle biological conversions.

In Moore, the court protected the commercial cell line because of the "work and skill" added by the scientists[32]. This mirrors John Locke's classical labor theory of property, which states that mixing one's labor with an unowned natural resource creates a private property right. However, this application completely ignores the foundational labor and biological energy expended by the human source. Blood production (erythropoiesis) is a physiological process requiring metabolic energy and nutritional intake from the individual. Therefore, the donor has

[29] Richard Titmuss, The Gift Relationship: From Human Blood To Social Policy 85 (Allen & Unwin 1970).
[30] Supra note 10 at p415.
[31] Supra note 12 at p128.
[32] Ibid.

already mixed their biological "labor" with the resource before any medical professional extracts it. By denying the donor a property right while granting it to the processing laboratory, the judiciary facilitates a legal system of uncompensated conversion.

B. The Economic Asymmetry and Exploitation of Rarity

This legal reality causes severe distortions in the healthcare market, particularly regarding blood pricing. When an individual walks into a blood bank in India, they donate their blood for free. However, when a patient requires that same blood, the hospital charges a significant fee. The National Blood Transfusion Council (NBTC) guidelines prescribe uniform processing charges (typically ranging from ₹1,050 to ₹1,450 per unit for whole blood/packed red blood cells in government facilities).

However, private corporate hospitals frequently exploit regulatory loopholes[33]. They tack on supplementary charges for specialized screening (such as Nucleic Acid Testing or NAT), cross-matching, storage, and specialized aliquoting, driving the end cost to anywhere between ₹4,000 and ₹12,000 per unit[34].

This exploitation escalates dramatically with rare blood phenotypes, such as the Bombay Blood Group (hh phenotype) or negative Rh factors (e.g., O-negative). Because these blood types are incredibly scarce, private networks and brokers often step in, artificially inflating prices under the guise of "emergency transport costs" or "handling overheads." For instance, during medical crises requiring the Bombay Blood Group, families are frequently coerced into paying upwards of ₹20,000 to independent facilitators to cover "expedited transport and preservation fees," resulting in profound unjust enrichment for downstream intermediaries. The donor, whose rare biological makeup is the sole source of value and who gave it altruistically, receives absolutely no compensation, while intermediate healthcare brokers reap substantial financial rewards. This state of affairs directly refutes the humanitarian justification for the altruistic model; the system is not free from commerce—it is simply free from paying the supplier.

C. Risks of an Unregulated Property Model

While the arguments for a property-based model are compelling, a complete shift toward an

[33] Supra note 23 at 758.
[34] Ibid.

unregulated free-market model presents significant dangers:

(1) Exploitation of the Economically Vulnerable: If blood becomes a completely unrestricted market commodity, impoverished individuals may turn to frequent blood extraction as a primary source of income, causing long-term harm to their health;

(2) Compromising the Safety of the Blood Supply: Financial compensation creates an incentive for donors to conceal high-risk behaviors, medical histories, or active infections to clear the screening process;[35] and

(3) The Coercion Paradox: In a pure market environment, corporate healthcare networks could use their dominant position to lock individuals into exploitative extraction contracts, effectively weaponizing poverty against bodily integrity[36].

Therefore, the solution cannot be an unchecked free market; instead, it requires a carefully structured legal framework that acknowledges property rights within a highly regulated system.

VI. SUGGESTIONS TO THE CURRENTLY EXISTING SYSTEM

To fix these systemic legal and economic inequities, India must reform its biological property jurisprudence. The following reforms are proposed to establish an equitable, safe, and dignified system:

1. Transition to a "Regulated Quasi-Property" Model: The legislature should amend THOTA and the Drugs and Cosmetics Act to recognize human blood and renewable tissues as the "quasi-property" of the individual. This legal status would grant the individual a recognized possessory right and a legal claim to the economic value generated by their biological resources. It would prevent medical institutions from commercializing a patient's unique biological material without a formal, revenue-sharing or compensatory agreement.

2. Implementation of a Standardized Compensatory Framework: To eliminate the black market while preserving donor health, India should introduce a standardized, state-regulated donor compensation system, separating compensation from a market-driven "sale price." Donors should not receive direct cash payments from hospitals. Instead, compensation should be

[35] Supra note 29 at 92.
[36] Supra Note 30.

provided via state-administered mechanisms, such as health insurance credits, tax rebates, or educational stipends. Furthermore, a centralized, biometric tracking system (linked to Aadhaar) must be implemented to enforce strict intervals between donations.

3. Strict Statutory Pricing Caps and Transparency: The Ministry of Health and Family Welfare, along with the National Pharmaceutical Pricing Authority (NPPA), must regulate blood processing fees. A strict, non-negotiable price ceiling must be established for all blood components across both public and private sectors. For rare blood groups like the Bombay Blood Group, the processing fees must be legally capped at the same rate as common blood groups. To offset the higher logistical costs, the state should establish a national "Rare Blood Equalization Fund," subsidized by corporate social responsibility (CSR) contributions from private healthcare conglomerates.

4. Mandatory Revenue Sharing for Bio-Medical Discoveries: If an individual's blood or cellular components are utilized by a research laboratory or pharmaceutical company to develop a commercial patent or cell-line[37], the law must mandate an equitable revenue-sharing mechanism. The source individual must be recognized as a co-owner or primary beneficiary of the biological asset, completely overturning the exploitative precedent established in the Moore decision.

VII. CONCLUSION

The current legal approach to human blood in India and much of the developing world is trapped in an unsustainable contradiction. By enforcing a strict altruistic model on donors while allowing healthcare providers to commercialize the resulting products, the state perpetuates an unfair economic system. This framework strips citizens of their property rights under the guise of morality, while allowing commercial entities to generate substantial revenue from their biological tissue.

Transitioning to a model that treats human blood as regulated private property is not a capitulation to raw commercialism; rather, it is a necessary evolution toward human dignity, equity, and bodily self-determination. By recognizing that an individual has a property interest in their biological fluids, the legal system can provide fair compensation, eliminate exploitative grey markets, and implement strict price caps to protect patients. Ultimately, the body belongs

[37] Supra note 12 at 144.

to the individual, and the law must evolve to ensure that the fruits of the human body are shared equitably with the person who sustains them.

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