



Legal and ethical aspect of human organ transplantation in India: A critical review

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Abstract

The proliferation of human organ trade for the purposes of transplantation during 1970s and 1980s has influenced World Health Organization (WHO) to develop a set of guidelines on human organ transplantation. Transplantation means the grafting of a human organ from any living or deceased person to some other living person for therapeutic purposes. Organs like liver, kidney, pancreas, pancreatic islet cells, small intestine, lungs, heart, corneas, skin graft, blood vessels, ear bone, ear drum, hair root are some of the organs and tissues that can be transplanted. The ultimate success of transplantation depends on the quality of the donated organ, and also on the warm anoxic time to which it is subjected. This is the time between the cessation of arterial oxygen supply and the refrigeration of the isolated organ. Transplantation of organs in the human body represents a notable advance in medical science and has tremendous life saving potential. Unfortunately, it has jumped into prominence in recent years because of some controversial issues, not only medical and legal, but also ethical, and even religious issues. There has been sensational reportage in the lay press of alleged gross violations of ethics, and kidneys are said to be stolen while patients were on the operation table for appendectomy, hysterectomy etc. Reports of body snatching, and persons being kidnapped for removal of kidneys have also appeared.

Key words: Human organ transplantation, World Health Organization(WHO), body snatching, warm anoxic time.

Introduction

Transplantation of organs in the human body represents a notable advance in medical science, and has tremendous life-saving potential. Unfortunately, it has jumped into prominence in recent years because of some controversial issues, not only medical and legal, but also ethical, and even religious issues. There has been sensational reportage in the lay press of alleged gross violations of ethics, and kidneys are said to be stolen while patients were on the operation table for appendectomy or hysterectomy. Reports of body snatching, and persons being kidnapped for removal of kidneys have also appeared. This situation of violation of laws in the field of organ transplantation in our country compelled the

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government of India to enact some stringent laws, of which one of the most important is the Transplantation of Human Organs Act 1994, it came into force in 1995, and deals with the regulation of removal, storage and transplantation of human organs for therapeutic purposes, and for the prevention of commercial trade in human organs. Every year, almost two lakh people in India need kidney transplantation and there are only 4,000 people donating them. This discrepancy in demand and supply leads to cases like the deeds of "Dr. Horror" Amit Kumar, accused of running an illegal racket out of Gurgaon (Pillay V.V 2016). The act also caused the Ear drums and Ear Bones act, 1982, and the Eye act, 1982 to be repealed though human tissues or organs, anatomically speaking are of several types, medico legally they are of only two types viz, regenerative and non-regenerative.

Regenerative Tissues or Organs: Regenerative tissues or organs are human tissues or organs, which, even if removed from their respective places in the anatomy, have the capacity to rejuvenate or replicate within the body. Blood, semen, bone



marrow, skin etc., are regenerative in character. So, if a person donates blood or bone marrow or other regenerative tissues or organs or bodily substances, he/she is not losing anything as these tissues or bodily substances have in them an inherent quality to regenerate within the body.

Nonregenerative Tissues or Organs: Organs such as kidney, heart, lung, liver etc., if removed from the human body will not be regenerated. As a result, in donation of such tissues or organs, the donor undoubtedly, loses a vital organ in the body, which in some cases may result in permanent partial disablement or may even lead to the donor's death (Nageshkumar 2010).

The Transplantation of Human Organs Act, 1994: The proliferation of human organ trade for the purposes of transplantation during 1970s and 1980s has influenced World Health Organization to develop a set of guiding principles on human organ transplantation. Accordingly, it has been resolved that, organs and tissues may be removed from the bodies of deceased and living persons, for the purpose of transplantation only in accordance with the following guiding principles---

- Organs may be removed from the bodies of deceased persons for the purpose of transplantation, if: 1) Consent required by law is obtained, 2) There is no reason to believe that the deceased person objected to such removal in the absence of formal consent given during the person's lifetime. 3) Physicians determining that the death of a potential donor has occurred, should not be directly involved in organ removal from the donor and subsequent transplantation procedures, or be responsible for the care of potential recipients of such organs.
- Organs for transplantation should be removed preferably from the bodies of deceased persons. However, adult living persons may donate organs; but in general, such donors should be genetically related to the recipients except regenerative tissues.
- An organ may be removed from the body of an adult living donor for the purpose of transplantation if the donor gives free consent. The donor should be free of any undue influence and pressure and sufficiently

informed to be able to understand and weigh the risks, benefits and consequences of consent.

- No organ should be removed from the body of a living minor for the purpose of transplantation. Under national law exceptions may be made in the case of regenerative tissues.
- The human body and its parts cannot be the subject of commercial transactions. Accordingly, giving or receiving payment including any other compensation or reward for organs should be prohibited.
- Advertising the need for or availability of organs, with a view to offering or seeking payment, should be prohibited.
- Physicians and other health professionals are prohibited from engaging in organ transplantation procedures if they have reason to believe that organs concerned have been the subjects of commercial transactions.
- Any person or facility involved in organ transplantation procedures is prohibited from receiving any payment that exceeds a justifiable fee for the services rendered. In the light of the principles of distributive justice and equality, donated organ should be made available to patients on the basis of medical need and not on the basis of financial or other considerations (Joga Rao SV and Ayyappa CP 1995).

Limitation of removal and transplantation of organs: Transplantation means the grafting of a human organ from any living or dead person to some other living person for therapeutic purposes, there is certain limitation for removal and transplantation of human organs. No human organ removed from the body of a donor before his/her death shall be transplanted into a recipient unless the donor is a closed relative of the recipient. A near relative means spouse, son, daughter, father, mother, brother or sister. Where any donor authorizes the removal of any of his/her organs after his/her death, the human organ may be removed and transplanted into the body of any recipient who may be in need of such organ. If a donor authorizes the removal of any of his/her organs before his/her death and then transplantation into the body of a recipient, who is not a near relative, by reason of his/her affection or



attachment towards the recipient or for any other special reasons, such human organ shall not be removed and transplanted without the prior approval of the authorization committee. The act enjoins upon the state government to constitute one or more authorization committees for this purpose. On an application jointly made by the donor and the recipient, the committee, after conducting a detailed enquiry, subject to compliance of various conditions, may grant approval for the removal and transplantation, by giving valid reasons(Act 1994).

Authority for removal of human organs:

1-Any donor (18 or more than 18 years of age) may authorize the removal before his death of any organ of his body for therapeutic purposes.

2- If any donor had in writing (in presence of 2 or more witnesses) authorized the removal of any organ after his death for therapeutic purposes, the person lawfully in possession of dead body shall grant to a doctor all reasonable facilities for removal.

3- When no such authority is there, person lawfully in possession of dead body can authorize the removal of any organ of the deceased person.

4- When human organ is to be removed, the medical practitioner shall satisfy himself, that life is extinct in such body or where it appears to be a case of brainstem death, such death has been certified by a board of doctors who are not a part of transplantation team.

5- Removal of human organs cannot be authorized if an inquest may be required to be held in relation to such body or a person is entrusted the dead body solely for the purpose of cremation.

6- Dead body not claimed by any near relatives within 48 hours from time of death, the authority lies with the management of hospital or prison. If there is reason to believe that any near relative of the deceased person is likely to claim the body even beyond 48 hours, no authority shall be given(Biswas Gautama 2010).

In the case of a person who is less than 18 years of age and whose brainstem death takes place, the parents of such person may authorize the removal of any organ. Section 7 of this act mandates that, after the removal of any human organ from the body of a person, the registered medical practitioner shall take adequate steps for the preservation of the human organs according to

current and accepted scientific methods to ensure viability.

Guideline for Hospital: The human organs cannot be removed for any purpose other than therapeutic purposes. The doctor should not remove organs unless he had explained all possible effects, complications and hazards connected with the removal and transplantation, to the donor and recipient respectively. The Act imposes for compulsory registration of hospitals engaged in transplantation activities. Medical practitioner shall not conduct transplantation at any unregistered place under this Act. The eyes and ears may be removed at any place from dead body of any donor for therapeutic purpose by a doctor. The central and state governments are empowered to appoint appropriate authority which can grant registration of hospitals, renew, suspend or cancel the registration, etc. and to specify condition for the same. The Government is also empowered to appoint authorization committee or committees with nominated members for the purpose of imposing restrictions on the removal and transplantation of human organs, etc(Reddy K.S. and Narayan 2014).

Offences and Penalties: According to Section18, any person who renders his/her services to any hospital, for purposes of transplantation, or conducts, or associates with, or helps in any manner in the removal of any human organ without authority, shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

If such a person is a registered medical practitioner, his/her name shall be reported by the appropriate authority to the respective state medical council for taking necessary action including the removal of his/her name from the register of the council for a period of two years for the first offense and permanently for the subsequent offense. In addition to this Section 19 deals with, whomsoever:

- Makes or receives any payment for the supply of, or for an offer to supply, any human organ.
- Seeks to find a person willing to supply for payment, any human organ.
- Offers to supply any human organ for payment.
- Initiates or negotiates any arrangement in involving making of any payment for the supply.



- Takes part in the management or control of a dead body of person, whether a society, firm or company whose activities include any of those mentioned in the clause.
- Publishes or distributes or causes to be published or distributed any advertisement in this regard, shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and shall also be liable to fine which shall not be less than ten thousand rupees, but may extend to twenty thousand rupees (The Transplantation of Human Organ Act, 1994).

Conclusion

The Transplantation of Human Organs Act 1994, provides for the regulation of removal, storage and transplantation of human organs for therapeutic purposes, and for prevention of commercial dealing of human organs and for matters connected there with or related thereto. Every year, almost two lakh people in India need kidney transplants and there are only 4,000 people donating them, this discrepancy in demand and supply leads to cases like the deeds of “Dr. Horror” Amit Kumar, accused of running an illegal racket out of Gurgaon. The incident has raised many questions, including the efficacy of the transplantation of human organs Act 1994. The medical fraternity in India, however, says the law is too strict for transplantation to be carried out legally all the time. According to many doctors, the section mentioning that only close relative can donate organs is too limiting and needs to be amplified. Also the provision for non-relatives to donate organs for attachment or emotional

reasons could be misused by any individual who could sell an organ illegally. The government is now proposing the idea of revising the transplantation of Human Organs Act. Among the changes being considered are mandatory declaration that patients are brain dead by all intensive care units of hospitals to help address the shortage of organs for donation in our country. It is compulsory to make the punishment under this Act punitive and cognizable for the illegal transplantation activities to prevent offenders from committing this crime.

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