



Study Of Indian Laws On Organ Transplantation, Its Ethical, Legal And Social Issues

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Introduction : The transplantation of an organ from one body to another is known as the organ transplant. The person who gives the organ is called the donor while the one who receives is called the recipient. Organ transplant is done to replace the recipient's damaged organ with the working organ of the donor so that the recipient could function normally.



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Organ Transplantation is a boon to medical industry as it has helped in saving the lives of those who would have died otherwise. There is a great need for human organs for transplantation. In fact, the need far exceeds the supply of transplantable organs. This disparity has led to the formulation of various legislations, attempting to regulate the scarce resources (transplantable human organs) and to help establish an equitable system to allocate the organs where they can do the most good.

Legally, organ donation can take place from living, genetically-related individuals; from living, unrelated individuals in special circumstances where no unauthorized payment is made to the donor; or from cadavers. Live donation of a single kidney was the first done in 1954, but live donation of parts of other organs is a relatively recent innovation in the 1990s.

Some of the organs that are mainly donated are kidney, Liver, heart, lung, pancreas, small bowel and sometimes skin along with the other things. In the earlier times illegal organ trafficking is a major problem because of corrupt and inefficient health care system. For stopping illegal organ transplant, the Government of India had come up with certain laws in 1994 that made organ sale a crime. The Human Organs Transplant Act, 1994 laid down certain rules and regulations that were to be followed while conducting organ transplant.

Laws and Rules Governing Organ Transplantation in India :

According to Organ Transplant Laws, no money exchange between the donor and the recipient was allowed. According to the 1994 Act, the unrelated donor had to file an affidavit in the court



of a magistrate stating that the organ is being donated out of affection. Later, the donor had to undergo a few tests before the transplant. The Authorization Committee checked all the supplied documents.

As per the Indian Law, sale of organs was banned. Thus, no foreigner could get a local donor. In case of money exchange, the offender had to pay heavy penalty. Close relatives of the recipient like siblings, parents, children and spouse could donate the organ without clearance from the government. However, they were required to appear before the authorization committee for clearance and approval.

In India, matters related to health are governed by each state. The Act was initiated at the request of Maharashtra, Himachal Pradesh and Goa (who therefore adopted it by default) and was subsequently adopted by all states except Andhra Pradesh and Jammu & Kashmir. Despite a regulatory framework, cases of commercial dealings in human organs were reported in the media. An amendment to the act was proposed by the states of Goa, Himachal Pradesh and West Bengal in 2009 to address inadequacies in the efficacy, relevance and impact of the Act. The amendment to the Act was passed by the parliament in 2011, and the rules were notified in 2014. The same is adopted by the proposing states and union territories by default and may be adopted by other states by passing a resolution. The legislation called the Transplantation of Human Organ Act (THO) was passed in India in 1994 to streamline organ donation and transplantation activities. Broadly, the act accepted brain death as a form of death and made the sale of organs a punishable offence. With the acceptance of brain death, it became possible to not only undertake kidney transplantations but also start other solid organ transplants like liver, heart, lungs, and pancreas. Despite the THO legislation, organ commerce and kidney scandals are regularly reported in the Indian media. In most instances, the implementation of the law has been flawed and more often than once its provisions have been abused.

Aim of Transplantation of human organs act, 1994

The Government passed an act in 1994 to rationalize organ donations and transplants in the country. The main aims of the act:

- Regulating removal, storage and transplantation of human organs for therapeutic purposes.



- Accepting brain death and making it possible to use these patients as potential organ donors.
- Preventing commercial dealings of organs.
- After this deal, the concept of brain death was legalized for the first time in India.

Ethical issues relating to Organ transplant :

There are ethical issues involved here. The kind of people who are willing to donate an organ, often do so out of poverty. And while donating an organ would not put their lives at risk, in the long run it puts a strain on their health.

1. Medical integrity: Patients and the public must be able to trust their doctors not to sacrifice the interest of one to that of another. Individual may make that sacrifice, but not their doctors.
2. Scientific validity: The basic biology and technology must be sufficiently assured to offer a probability of beneficial outcome, case by case.
3. Consent: Consent based upon information adequately presented, weighted and understood, and unforced.

Paying a willing donor for their organ should not be confused with the illegal trade of organs. This practice is alarmingly common in India.

To make the practice more transparent, Dr. Sundar says the government should amend the law to remove existing ambiguities. He suggests laying down specific criteria for payment, perhaps spelling out fixed amounts.

Singapore is an example of a country that has made paying donors for their organs legal, where the government set up a national registry for the long-term follow-up of living donors and providing them with some health insurance.

Another problem is that there are too few surgeons and hospitals equipped for transplants. Ventilators for preserving the organs of a brain dead person and intensive-care unit personnel trained to manage such situations are prerequisites for a transplant, doctors.



Legal And Social Issues :

The kidney trade is a global phenomenon; it is present in both the developing and the developed world. Since the introduction of the immuno-suppressant drug Cyclosporine in the early 1980s, organ transplantation has become a relatively safe operation. More and more patients suffering from End Stage Renal Disease opt for kidney transplants instead of remaining on dialysis. The result in many parts of the world is, the demand for kidneys far outweighs the supply. Brokers have stepped in, offering kidneys for sale to cover the deficit.

Two central issues related to the trade in organs need to be addressed: the effectiveness in implementing the current law and the financial compulsions that make people donate their organs

Transplantation of organs from one human being to another has thrown up complex religious and moral questions. If a heart is removed from a cadaver, does it mean that the latter is now devoid of a 'soul'? Will removal of organs in any way affect the process of 'rebirth' or resurrection? Hindu and Vedic scholars accept the concept of brain death. The concept of giving or daan is ingrained in Hindu thought. Pursuant to the Organ Transplantation Act, in India consent is a major factor when you are talking about organ transplantation. Organs can only be procured willfully, not forcefully. The donor has to directly agree for transplantation in order for the organs to be removed.

Conclusion

Although organ transplantation helps human beings but there are other issues involved in it. One of them is the cost of treatment. It is always possible for rich to take advantages of this miracle of medical science because they can afford it because the donors are always poor but it is not possible for poor to take advantage of it.

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