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REVIEW DOCUMENT

TRANSPLANTATION OF HUMAN ORGAN ACT, 1994

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TRANSPLANTATION OF HUMAN ORGAN ACT, 1994

OBJECTIVE:

The Act main aim of THOA, 1994 is to provide for the guidelines and regulation of storage, removal, and transplantation of human organs strictly for therapeutic purpose. And for the prevention of commercial dealings in human organs and for matters connected therewith or incidental thereto. Apart from this another aim is to accept brain death and making it possible to use these patients as potential organ donors.

IMPORTANT PROVISIONS:

Chapter - II

Section 3 : Authority for removal of human organs

- (1) Any person allows and authorise the removal of human organs/ tissues or both before his death, in a prescribed way.
- (1A) For the purpose of removal ,storage or transplantation of human organs or tissues or both, it is the duty of registered medical practitioner working in a hospital with transplant co-ordination (if available).
- (1B) Duties mentioned in (1A) shall also apply in the case of registered medical practitioner working in an Intensive Care Unit in a hospital which is not registered under this Act.
- (2) If any donor , in writing ,and in the presence of two or more witnesses (at least one of whom is a near relative of such person), unequivocally authorised at any time before his death, the removal of any human organ of his body, after his death, for therapeutic purposes, the person lawfully in possession of the dead body of the donor shall, grant to a registered as a medical practitioner all reasonable facilities for the removal, for therapeutic purposes, of human organ or tissue or both from the dead body of the donor.
- (3) When no such authority ,which is mentioned in sub-section 2 , is given by donor before any time of his death but no objection was also expressed by such person to any of his to use human organ or tissues or both unless he has reason to believe that any near relative

of the deceased person has objection to any of the deceased person's [human organs or tissues or both] being used for therapeutic purposes, authorise the removal of any [human organ or tissue or both] of the deceased person for its use for therapeutic purposes.

- (4) The authority given under sub-section (1) or sub-section (2) or sub-section (3) shall be sufficient warrant for the removal, for therapeutic purposes, of the [human organ or tissue or both]; but no such removal shall be made by any person other than the registered medical practitioner.
- (5) Where any [human organ or tissue or both] is to be removed from the body of a deceased person, the registered medical practitioner shall satisfy himself, before such removal, by a personal examination of the body from which human organ or tissue or both is to be removed, that life is extinct in such body or, where it appears to be a case of brain-stem death, that such death has been certified under sub-section (6).
- (6) Where any [human organ or tissue or both] is to be removed from the body of a person in the event of his brain-stem death, no such removal shall be undertaken unless such death is certified form and in such manner and on satisfaction of such conditions and requirements as may be prescribed, by a Board of medical experts consisting of the following, namely:—
 - (i) the registered medical practitioner in charge of the hospital in which brain-stem death has occurred
 - (ii) an independent registered medical practitioner, being a specialist, to be nominated by the registered medical practitioner specified in clause (i), from the panel of names approved by the Appropriate Authority;
 - (iii) a neurologist or a neurosurgeon to be nominated by the registered medical practitioner specified in clause (i), from the panel of names approved by the Appropriate Authority: (where a neurologist or a neurosurgeon is not available, the registered medical practitioner may nominate an independent registered medical practitioner, being a surgeon or a physician and an anaesthetist or intensivist subject to the condition that they are not members of the transplantation team for the concerned recipient and to such conditions as maybe be prescribed).

(iv) the registered medical practitioner treating the person whose brain-stem death has occurred.

(7) Brain-stem death of any person, less than eighteen years of age, occurs and is certified under sub-section (6), any of the parents of the deceased person may give authority, in such form and in such manner as may be prescribed, for the removal of any [human organ or tissue or both] from the body of the deceased person.

Section 4 : Removal of [human organs or tissues or both] not to be authorised in certain cases.—

(1) No facilities shall be granted under sub-section(2) of section 3 and no authority shall be given under sub-section (3) of that section for the removal of any [human organ or tissue or both] from the body of a deceased person, if the person required to grant such facilities, or empowered to give such authority, has reason to believe that an inquest may be required to be held in relation to such body in pursuance of the provisions of any law for the time being in force.

(2) No authority for the removal of any [human organ or tissue or both] from the body of a deceased person shall be given by a person to whom such body has been entrusted solely for the purpose of interment, cremation or other disposal.

Section 5 : Authority for removal of [human organs or tissues or both] in case of unclaimed bodies in hospital or prison.—

(1) If a dead body in a hospital or prison is not claimed within 48 hours of death by any of the near relatives, the authority for time being is given to management or control of hospital or prison or an employee to whom the charge has been given.

(2) No authority will be given if ‘authority’ has a reason to believe that near relatives may come to claim even after the time limit.

Section 6. Authority for removal of [human organs or tissues or both] from bodies sent for post-mortem examination for medico-legal or

pathological purposes.—Where the body of a person has been sent for post-mortem examination—

(a) For medico-legal purposes by reason of the death of such person having been caused by accident or any other unnatural cause; or

(b) The person competent under this Act to give authority for the removal of any [human organ or tissue or both] from such dead body may, if he has reason to believe that such [human organ or tissue or both] will not be required for the purpose for which such body has been sent for post-mortem examination, authorise the removal, for therapeutic purposes, of that [human organ or tissue or both] of the deceased person provided that he is satisfied that the deceased person had not expressed, before his death, any objection to any of his [human organs or tissues or both] being used, for therapeutic purposes after his death or, where he had granted an authority for the use of any of his 2 [human organs or tissues or both] for therapeutic purposes, after his death, such authority had not been revoked by him before his death.

Chapter – III

AUTHORITY FOR THE REMOVAL OF [HUMAN ORGANS OR TISSUES OR BOTH]

Section 11 : Prohibition of removal or transplantation of [human organs or tissues or both] for any purpose other than the therapeutic purposes-

No donor and no person empowered to give authority for the removal of any human organ shall authorise the removal of any [human organ or tissue or both] for any purpose other than therapeutic purposes.

Chapter – IV

OFFENCES AND PENALTIES

Section 18. Punishment for removal of human organ without authority.—

- (1) Any person who is associated with , renders services to any hospital who is involved in transplantation of human organs without authority shall be punishable with
- (2) imprisonment for a term which may extend to [ten years and with fine which may extend to twenty lakh rupees.
- (3) Person convicted under subsection 1, if he is a medical practitioner, his complaint would be given by an appropriate authority to the State Medical Council for the appropriate actions. If the offence is for the 1st time his name would be removed from the register of council for 3 years and permanently for subsequent offence.
- (4) Any person who is associated with, renders services to any hospital who is involved in transplantation of human tissue without authority, shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees.

Section 19 :Punishment for commercial dealings in human organs.—
Whoever

- (a) makes or receives any payment for the supply of, or for an offer to supply, any human organ;
- (b) seeks to find a person willing to supply for payment any human organ;
- (c) offers to supply any human organ for payment; or
- (d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ;
- (e) takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist of or include the initiation or negotiation of any arrangement referred to in clause (d); or
- (f) publishes or distributes or causes to be published or distributed any advertisement,—
- (a) inviting persons to supply for payment of any human organ;
- (b) offering to supply any human organ for payment; or

(c) indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause (d);

(g) abets in the preparation or submission of false documents including giving false affidavits to establish that the donor is making the donation of the human organs, as a near relative or by reason of affection or attachment towards the recipient,

shall be punishable with imprisonment for a term which shall not be less than [five years but which may extend to ten years and shall be liable to fine which shall not be less than twenty lakh rupees but may extend to one crore rupees].

Section 19A. Punishment for illegal dealings in human tissues.—
Whoever—

(a) makes or receives any payment for the supply of, or for an offer to supply, any human tissue; or

(b) seeks to find a person willing to supply for payment and human tissue; or

(c) offers to supply any human tissue for payment; or

(d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human tissue; or

(e) takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist of or include the initiation or negotiation of any arrangement referred to in clause (d); or

(f) publishes or distributes or causes to be published or distributed any advertisement—

(i) inviting persons to supply for payment of any human tissue; or

(ii) offering to supply any human tissue for payment; or

(iii) indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause (d); or

(g) abets in the preparation or submission of false documents including giving false affidavits to establish that the donor is making the donation of the human tissues as a near relative or by reason of affection or attachment towards the recipient,

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall be liable to fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.]

RECENT AMENDMENT:

This has been subsequently amended in 2011, and new rules came into force in 2014.

LOOPHOLES:

Police have arrested a senior surgeon in Mumbai (Bombay) for his alleged role in facilitating trade in human kidneys. The arrest has exposed a loophole in India's decade old organ transplantation act. Doctors say that the act is not strict enough to stop unrelated living donors pretending that they are a friend or relative of the recipient and are giving a kidney for emotional rather than financial reasons.

India's Human Organ Transplantation Act of 1994 allows a father, mother, brother, or sister to donate organs. Other live donors are screened by a state transplantation authorisation committee to ascertain that they are donating organs exclusively because of emotional attachment to patients and not for monetary or material gain. "This clause has [produced] a loophole for unrelated transplants with state sanction.

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CONCLUSION

The transplantation act has evolved over last few decades to its present form. As transplant physicians and surgeons, we law students should also make ourselves aware of the existent rules. Even the students in transplant program should be made aware of these guidelines. This will go a long way in avoiding legal hassles in day-to-day transplant practice.

About the Author



I'm AaroHi Adbe, student of B.A.LLB 3rd year from Manikchand Pahade law college Aurangabad, Maharashtra. Amazing experience interning with LEGALEAGLE LAW FORUM and got to increase my knowledge. People were very supportive and were always there to solve the queries. Every work was on time which actually motivated me to complete my work before deadline.