



## The Transplantation of Human Organs Act

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The transplantation of Human Organs Act came into force w.e.f. 4-2-1995 in the states of Goa, Himachal Pradesh, Maharashtra and all the Union Territories vide notification No. SO 80(E), dated 4-2-1995 published in the gazette of India, extra part II, Section-III(ii) dated 4-2-1995. In exercise of the powers conferred by sub-section (I) of section 24 of the transplantation of Human Organs Rules 1995. Under chapter VII, Section 25 the Eardrums and Earbones Act 1982 and the Eyes Act 1982 were repealed with the enforcement of the transplantation of Human Organs Act 1994. The Human Organ Transplantation Act was passed by J&K State in April 1997. The salient features of the Transplantation of Human Organs Act are given below :

### Authority for removal of Human Organs

- (1) Any donor may, in such manner and subject to such condition as may be prescribed, authorize the removal before his death, of any human organ of his body for therapeutic purposes.
- (2) If any donor had 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, unless he has any reason to believe

that the donor had subsequently revoked the authority aforesaid, grant to a registered medical practitioner all reasonable facilities for the removal for therapeutic purposes, of that human organ from the dead body of the donor.

- (3) Where no such authority as is referred to in sub-section (2) was made by any person before his death and no such objection was also expressed by such person to any of his human organs being used after his death for therapeutic purposes, the person lawfully in possession of the dead body of such person may unless he has reason to believe that any near relative of the deceased person has objection to any of the deceased person's human organ being used for therapeutic purposes authorise the removal of any human organ of the deceased person for its use for therapeutic purposes.
- (4) The authority given under sub-section (1) or sub-section (2) or as the case may be, sub-section (3) shall be sufficient warrant for the removal for therapeutic purposes of the human organ but no such removal shall be made by any person other than the registered medical practitioner.
- (5) Where any human organ 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

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body from which any human organ 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 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 in such 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 ; and

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

(7) Notwithstanding anything contained in sub-section (3) where 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 from the body of the deceased person.

#### **Removal of Human Organs 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 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 from the body has been entrusted solely for the purpose of interment, cremation or other disposal.

#### **Authority for removal of Human Organs in case of unclaimed bodies in Hospital or Prison**

(1) In the case of a dead body lying in a hospital or prisons and not claimed by any of the near relatives of the deceased person within forty-eight hours from the time of the death of the concerned person, the authority for the removal of any human organ from the dead body which so remains unclaimed may be given in the prescribed form, by the person in charge, for the time being of the management or control of the hospital or prison, or by an employee of such hospital or prison authorised in this behalf by the person incharge of the management or control thereof.

(2) No authority shall be given under sub-section (1) if the person empowered to give such authority has reason to believe that any near relative of the deceased person is likely to claim the dead body even though such near relative has not come forward to claim the body of the deceased person within the time specified in sub-section (1).

### **Authority for removal of Human Organs 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) for pathological purposes.

the person competent under this Act to give authority for the removal of any human organ from such dead body may, if he has reason to believe that such human organ will not be required for the purpose for which such body has been sent for post-mortem examination, authorize the removal for therapeutic purposes of that human organ 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 being used, for therapeutic purposes after his death or where he had granted an authority for the use of any of his human organs for therapeutic purposes after his death, such authority had not been revoked by him before his death.

### **Preservation of Human Organs**

After the removal of any human organ from the body of any person the registered medical practitioner shall take such steps for the preservation of the human organ so removed as may be prescribed.

### **Savings**

- (1) Nothing in the foregoing provision of this Act shall be constructed as rendering unlawful any dealing with the body or with any part of the body or a deceased person if such dealing would have been lawful if this Act had not been passed.
- (2) Neither the grant of any facility or authority for the removal of any human organ from the body of a deceased person in accordance with the provisions of this Act nor the removal of any

human organ from the body of a deceased person in pursuance of such authority shall be deemed to be an offence punishable under section 297 of the Indian Penal Code 145 of 1860.

### **Restrictions on removal and transplantation of Human Organs**

- (1) Save as otherwise provided in sub-section (3) no human organ removed from the body of a donor before his death shall be transplanted into a recipient unless the donor is a near relative of the recipient.
- (2) Where any donor authorises the removal of any of his human organs after his death under sub-section (2) or section 3 or any person competent or empowered to give authority for the removal of any human organ from the body of any deceased person authorises such removal the human organ may be removed and transplanted into the body or any recipient who may be in need of such human organ.
- (3) If any donor authorises the removal of any of his human organs before his death under sub-section (1) of section 3 for transplantation into the body of such recipient not being a near relative as is specified by the donor by reason of 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 Authorisation Committee.
- (4) (a) The Central Government shall constitute by notification one or more Authorisation Committees consisting of such members as may be nominated by the Central Government on such terms and conditions as may be specified in the notification for each of the Union Territories for the purposes of this section.

- (b) The State Governments shall constitute by notification one or more Authorisation Committees consisting of such members as may be nominated by the State Government on such terms and conditions as may be specified in the notification for the purposes of this section.
- (5) On an application jointly made in such term and in such manner as may be prescribed by the donor and the recipient. The Authorisation Committee shall after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements or any Act and the rules made thereunder, grant to be applicants approval or the removal and transplantation of the human organ.

transplantation conducts 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.

- (2) Where any person convicted under subsection (1) is a registered medical practitioner, his name shall be reported by the appropriate authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.

**Punishment for removal of Human Organ without authority**

- (1) Any person who renders his services to or at any hospital and who, for purposes of

**References**

1. The Gazette of India Extraordinary Part II Feb. 4, 1995.

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