

## Appendix 'A'

### MODEL CORNEAL GRAFTING ACT WHICH WAS PROPOSED BY THE EYE BANK ASSOCIATION OF INDIA

An act to provide for procuring donor human eyes of deceased persons for therapeutic purposes and for matters connected therewith.

Whereas it is expedient to pass the amended Corneal Grafting Act, be it enacted in the ..... year of the Republic of India as follows :

#### SHORT TITLE, EXTENT & COMMENCEMENT

- 1.(1) This Act may be called the 'Donor Eyes (Authority for Removal and Use for Therapeutic Purposes) Act 19....'
- (2) It extends to the whole of ....
- (3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

#### DEFINITIONS

2. In this Act, unless the context otherwise requires :

- (a) 'Authorised Person' means the Administrative Officer appointed by the Government with powers to administer the Act.
- (b) 'Approved Institution' means a teaching Medical Institution, an Eye Hospital or an Eye Bank which is a member of the Eye Bank Association of India.
- (c) 'Near Relative' means any person related to a deceased person as spouse, parent, son, daughter, brother or sister and includes any other person who is related to him by blood.
  - (i) By lineal consanguinity within three degrees or by collateral consanguinity within six degrees or ;
  - (ii) By marriage with any of the relatives aforesaid.

Explanation :

The expressions 'lineal consanguinity' and 'collateral consanguinity' shall have the meanings respectively assigned to them in the Indian Succession Act of 1925 and degrees of relationship shall be computed in the manner laid down in that Act.

- (d) 'Registered Medical Practitioner' means a medical practitioner who possesses a recognized medical qualification as defined in Clause (h) of section 2 of the Indian Medical Council Act of 1956.
- (e) 'Technician' means a person trained in enucleation procedure in the Ophthalmic Department of a hospital or teaching institution or certified by the Eye Bank Association of India (EBAI) on the basis of having passed its training course in enucleation procedure conducted by EBAI or a Teaching Institution.
- (f) 'Unclaimed body' means
- (i) The body of a deceased person who was admitted in the hospital without any address or who is not visited in the hospital by any attendants from the time of admission and remains unattended till death and has no relatives to claim his body within such time as may be prescribed.
  - (ii) Dead body of a person or a child recovered by the police as unclaimed.
  - (iii) A prisoner who does not get any letters or is not visited by any relation in the jail and dies or is hanged and his body is not claimed by any relation.

### **AUTHORITY FOR REMOVAL OF EYES OF DECEASED PERSONS**

- 3.(1) If any person had, either in writing or orally, in the presence of two or more witnesses (at least one of whom is a near relative of such person) unequivocally authorized, at any time before his death, the use of his eyes, after his death, for therapeutic purposes (such person being hereafter in this sub-section referred to as the donor), 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 authorization aforesaid, grant to a registered medical practitioner all reasonable facilities for the removal for therapeutic purposes, of the eyes from the dead body of the donor.
- (2) Where no such authorization, as is referred to in sub-section (1), was made by any person before his death but no objection was also expressed by such person to his eyes being used after his death for therapeutic purposes, the person lawfully in possession of the body of the deceased person may authorize the removal of the eyes of the deceased person for their use for therapeutic purposes.

- (3) The authority given under sub-section (1) or under sub-section (2) as the case may be, shall be sufficient warrant for the removal, for therapeutic purposes, of the eyes from the body of the deceased person, but no such removal shall be made by any person unless a registered medical practitioner had satisfied himself before such removal, by a personal examination of the body, from which eyes are to be removed, that life is extinct in such body.
- (4) A technician certified by the Eye Bank Association of India or trained by an eye hospital or eye department of a teaching institution or through EBAI conducted courses may remove the eyes for therapeutic use if a registered medical practitioner is present to certify the death of the deceased person or if a death certificate of the treating registered medical practitioner is produced before him by the next of kith and kin or by any near relative of the deceased person and consent given for removal of eyes.

#### **REMOVAL OF EYES NOT TO BE AUTHORISED IN CERTAIN CASES**

- 4.(1) No facilities shall be granted under sub-section (1) of section 3 and no authority shall be given under sub-section (2) of that section for the removal of eyes 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 and that the presence of eye balls on the body may be required for determining the cause of death or for identification of the body.
- (2) No authority for the removal of eyes 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.

#### **AUTHORITY FOR REMOVAL OF EYES IN CASE OF UNCLAIMED BODIES IN HOSPITAL OR PRISON OR MORTUARY**

- 5.(1) In the case of a dead body lying in a hospital or prison or transferred to a mortuary and not claimed by any of the near relatives of the deceased person, the authority for the removal of eyes from the dead body which so remains unclaimed may be given, subject to the provisions of sub-section (2) in the prescribed form by the person in charge,

for the time being, of the management or control of the hospital or prison or mortuary or by an employee of such hospital or prison or mortuary, authorized in this behalf by the person in charge of the management or control thereof.

- (2) The authority referred to in sub-section (1) shall not be given except after the expiry of :
- (i) One hour from the time of death of the concerned person, in cases where no facility for cold storage of the dead body is available in the hospital or prison or mortuary.
  - (ii) Two hours from the time of the death of the concerned person, in cases where facility for cold storage of the dead body is available in the hospital or prison or mortuary.

#### **Explanation:**

For the purposes of this section "hospital" includes nursing home, Medical or teaching institution or other like institution.

### **AUTHORITY FOR REMOVAL OF EYES FROM BODIES SENT FOR POST-MORTEM EXAMINATION FOR MEDICO-LEGAL OR PATHOLOGICAL PURPOSES**

6. 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 the eyes from such body may, if he has reason to believe that the eyes will not be required to identify the body or for determining the cause of death, authorize the removal, for therapeutic purposes, of the eyes of such deceased person.

## **PRESERVATION OF EYES REMOVED FROM THE DEAD BODIES**

7. After the removal of eyes from the body of the deceased person, the registered medical practitioner shall dispatch the eyes to the nearest eye bank for processing or preservation of the eyes so removed for therapeutic use.

## **SAVINGS**

8. (1) Nothing in the foregoing provisions of this Act shall be construed as rendering unlawful any dealing with the body or with any part of the body of 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 eyes from the body of a deceased person in accordance with the provisions of this Act nor the removal of eyes 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.

## **PROTECTION OF ACTION TAKEN IN GOOD FAITH**

9. No suit or prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

## **POWER TO MAKE RULES**

10. (1) The Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :
  - (a) The form in which removal of eyes from unclaimed bodies may be authorized as required by section (5)
  - (b) Any other matter which is required to be or may be prescribed.

- (3) The Government may make rules by notification in the official gazette to carry out the purpose of this Act. Every rule made under this Act shall be laid, as soon as may be, after it is made, before each house of Parliament / legislature while it is in session or immediately in the next session.

## **CESSATION OF OPERATION OF ACT OF 19..**

10. (1) The Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
  - (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :
11. (1) On the commencement of this Act, the Corneal Grafting Act enacted in ...as in the force in the .... (area) shall cease to be in force in the (area).

Provided that such cessation shall not affect the previous operation of the enactment aforesaid and anything done or any action taken including any authority granted, any direction or notice issued, under any provision of such enactment shall, in so far as it is not inconsistent with the provisions of this Act, continue to be in force unless and until superseded by anything done or any action taken under this Act.
- (2) Any reference in the enactment so ceasing to be in force, to any officer, authority or person entrusted with any functions thereunder, shall be construed, where necessary, as a reference to the corresponding officer, authority or person functioning under this Act.