

Appendix 'B'

TRANSPLANTATION OF HUMAN ORGANS ACT, 1994 (Extracts relevant to Eye Donation and Corneal Transplant)

CHAPTER II

Authority for the removal of human organs

3.(1) Any donor may, in such manner and subject to such conditions 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 authorized 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 is referred to in sub-section (2), was made by any person before his death but no 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 organs being used for therapeutic purposes, authorize 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.

(Author's comments : The authority for removal of eyes has not been extended under the Act to duly trained technicians who need to be empowered to remove eyes from the dead body for therapeutic purposes).

5.(1) In the case of a dead body lying in a hospital or prison 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 authorized in this behalf by the person in charge of the management or control thereof.

(2) No authority shall be given under sub-section (i) 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 under sub-section (i).

(Author's comments : This is a damaging provision as the corneas removed after 4 – 6 hours have no utility for the purpose of corneal transplant.)

Authority for removal of human organs 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 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.

Author's comments :

Note : Although the Act does permit the removal of corneas from the medico-legal cases, it requires to be worded more positively. To achieve this purpose, the EBAI has suggested the following amendment in clause 6 (b) of the Act as :

** the expression 'provided that he is satisfied' to be replaced by the expression 'unless he has reasons to believe'*

*** the term 'not' to be deleted*

**** the term 'not' to be deleted*

CHAPTER V

REGISTRATION OF HOSPITALS engaged in removal, storage or transplantation of human organs

14. (1) No hospital shall commence any activity relating to the removal, storage or transplantation of any human organ for therapeutic purposes after the commencement of this Act unless such hospital is duly registered under this Act;

Provided that every hospital engaged, either partly or exclusively, in any activity relating to the removal, storage or transplantation of any human organ for therapeutic purposes immediately before the commencement of this Act, shall apply for registration within sixty days from the date of such commencement.

Provided further that every hospital engaged in any activity relating to the removal, storage or transplantation of any human organ shall cease to engage in any such activity on the expiry of three months from the date of commencement of the Act unless such hospital has applied for registration and is so registered or till such application is disposed of, whichever is earlier.

(2) Every application for registration under sub-section (1) shall be made to the appropriate Authority in such form and in such manner and shall be accompanied by such fees as may be prescribed.

(3) No hospital shall be registered under this Act unless the Appropriate Authority is satisfied that such hospital is in a position to provide such specialised services and facilities, possess such skilled manpower and equipments and maintain such standards as may be prescribed.

CERTIFICATE OF REGISTRATION

15. (1) The Appropriate Authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules made thereunder, grant to the hospital certificate of registration in such form, for such period and subject to such conditions as may be prescribed.

(2) If, after the inquiry and after giving an opportunity to the applicant of being heard, the Appropriate Authority is satisfied that the applicant has not complied with the requirements of this Act and the rules made thereunder, it shall, for reasons to be recorded in writing, reject the application for registration.

(3) Every certificate of registration shall be renewed in such manner and on payment of such fees as may be prescribed.

(Author's comments : see page 26 Registration of Eye Banks)

CHAPTER VI

OFFENCES AND PENALTIES

Punishment for removal of human organ without authority.

18. (1) Any person renders his services to or at any hospital and who, for purposes of 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 sub-section (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 commercial dealings in human organs.

19. 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;
- (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 advertisements, -

- (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),

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 be liable to fine which shall not be less than ten thousand rupees but may extend to twenty thousand rupees:

Provided that the court may, for any adequate and special reason to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than two years and a fine less than ten thousand rupees.

Punishment for contravention of any other provision of this Act.

20. Whoever contravenes any provision of this Act or any rule made, or any condition of the registration granted, thereunder for which no punishment is separately provided in this Act shall be punishable with imprisonment for the term which may extend to three years or with fine which may extend to five thousand rupees.

Author's comments :-

It is an admitted fact that in case of other human organs especially kidney transplants, there was a wide spread racket of commercial dealings whereby poor people were offered monetary consideration to part with their organs especially kidney and in the whole process there was exploitation by the middle men as well as the unscrupulous Medical Practitioners. In fact, this was one of the main reasons for the enactment of this act by the Govt. of India. However, as far as corneas are concerned such instances were unheard of and as mentioned in Chapter 3, it would have been more appropriate to make separate provision for corneas and corneal grafting rather than including them along with other organs under a common act.

CHAPTER VII

MISCELLANEOUS

Protection of action taken in good faith

23 (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.