

AABHL CONFERENCE, 2024

SYDNEY, AUSTRALIA

1st – 4th December, 2024

**PAPER PRESENTATION ON
'ORGAN TRANSPLANTATION LAW IN INDIA:
SELECT ISSUES & IMPLICATIONS : RE-EXPLORED'**

Prof. (Dr.) S.V. Joga Rao

PhD

Advocate & Healthcare Consultant

Legalexcel Attorneys

Bengaluru, India

(Formerly Professor of Law, NLSIU, Bengaluru)

4th December, 2024

Australasian Association of Bio-Ethics & Health Law

University of Sydney,

SYDNEY

Organ Transplantation Landscape in India

- Almost 17,000-18,000 Solid Organ Transplantations are performed annually mostly by Private Hospitals;
- Kidney is the most transplanted organ, however, stark reality is, as against supply of 11,243 Kidneys, the demand is for more than 2,00,000 per year;
- Burden of chronic diseases like diabetes and hypertension.
 - The Lancet Regional Health – Southeast Asia 2023;21:100366
 - <http://doi.org/10.1016/j.lansea.2024.100366>

Situation of shortage of organs in India

- An estimated 2 lakh patients die of liver failure or liver cancer. Hence about 25-30 thousand liver transplants are needed annually in India but only about one thousand five hundred are being performed. Similarly about 50000 persons suffer from Heart failures annually but only about 10 to 15 heart transplants are performed every year in India. In case of Cornea, about 25000 transplants are done every year against a requirement of 1 lakh.

- Directorate General of Health Services,

Ministry of Health & Family Welfare, Government of India, 2024

Transplantation of Human Organs & Tissues Act, 1994

Legislative Objectives

- 'To provide for regulation of removal, storage and transplantation of human organs and tissues only for therapeutic purposes'
- 'Criminalization of commercial dealing in human organs and tissues'

Legal Framework

Cadaver Donation

- **Sections 3- 8 of THOTA deals with Cadaver Donations.**
 - At anytime before his death, any person is entitled to authorise in writing.
 - In the absence of the same, person who is lawfully in possession of the same can authorise removal.

Live Donation

- Near relatives and Non- near relatives (Altruistic)

Authorities

- Competent Authority
- Hospital Based Authorization Committee
- State Authorisation Committee
- Documentation formalities and Approval.

Cadaver Transplantation: Challenges

- THOTA does not provide for a presumed consent of organ donation from a deceased person, but instead requires an informed consent by the donor or the person lawfully in possession of the body.
 - Shah SB, Shah BV. Legal aspects of transplantation in India. Indian J Transplant 2018;12:169-173.

Cadaver Transplantation: Challenges

- “there is a need to promote deceased organ donation rather than relying on living donors”
 - Notto Report - **Government of India, Ministry of Health & Family Welfare.** *Guidelines for Implementation of National Organ Transplant Program (Period: 2021-22 to 2025-26)*

Live Donations - Challenges

- Women constitute for a significant amount of live donors.
- SWAP donations are confined only to near relatives.
- Generally Hospitals do not entertain, non-near relatives live donations.

Organ Trafficking Trends of Recurrence

- Recent developments clearly reflect that Organ trafficking continues to be a reality in select territories.

Rational Responses Cadaver Transplantation

- Awareness about 'brain death' is the key factor to bring in purposeful social campaign.

Live Donations

- Scope of near relatives need to be widened.
- Gender specific interest must be initiated against patriarchal veiled coercion.

Organ Trafficking

- The Anti-Human Trafficking Units (AHTU) must be activated with international collaboration.
- Interests of the poor and gullible must be protected.
 - **Trafficking of Human Organs in India**, Fr Mathew Abraham C.Ss.R., Health Secretary, Catholic Bishops' Conference of India, 2015



Thank You !