

A Socio-legal Study on COVID Pandemic and its Impact on the Human Organ Transplantation in India

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Abstract—In India, it is a callous fact that human organ donations reduced significantly in the past few months, especially during the nationwide lockdown which was imposed in March. The fact is that organ donations have always been dreadfully low in India. It is estimated that only 0.65 donations per million populations take place in the country, as compared to 35 in Spain and 26 in the U.S. respectively. However, in the past few months due to Covid-19 pandemic, organ donations have reduced drastically across the world, including India. The law in its progressive nature always purports its ideology of promoting organ donation even during this Covid-19.

It is pertinent to note that the law, relating to organ donation in India is well written in the books of the statute, but in practice, it seems to be impractical. It lacks intensity to curb the problem of cadaver donations and carrying-out organ donation in case of a brain dead person due to his/her death on road accident. It is therefore, strongly recommended that India needs to introduce the concept of ‘Opting-out system’ and ‘Presumed Consent system’ phenomena in its human organs related Acts and regulations. This shall enhance the possibilities of cadaver organ donations procurements from the road accidents, brain deaths and at the same time, create sensitization nationwide during the COVID-19 situation. The law on Indian Transplantation of Human Organs Act, 1994 (THOA) has proved to be a great value-addition in order to curb the issue of shortage of organ donation.

Index Terms—Cadaver, THOA, COVID-19, Human Organ Donation

I. INTRODUCTION

“When you choose to gift life after you have gone, you choose to live forever”. –DaanirKarnn

The above-mentioned quote of Daanvir Karnn has the great significance in Indian Culture who strongly believed in the philosophies of compassion and giving. This Indian philosophy of giving-away everything for the betterment of mankind has made the remarkable

differences in the lives of many. In this consonance, the passing of Indian Transplantation of Human Organs Act, 1994 (THOA) emerged as a new era in Indian medicine. This legislation was written on similar provisions as the United Kingdom (UK’s) Human Organ Transplants Act, 1989.

It is pertinent to note that the organ donation in India in the course of Covid-19 pandemic situation, witnessed a huge scarcity, especially since the nationwide lockdown that was imposed in March, 2020, till date. Organ donation has come down significantly during the pandemic. Overall, India witnessed, a 70 per cent drop in the number of organ donors. The difficult situation of Covid-19 has caused the deterioration of the quality of a donor’s body. The Corona virus, enormously affect a patient’s lungs and therefore, it was witnessed that there has been an increase in the number of potential recipients and reduction in the number of donors. This has been reported by the National Health Commission of India one of the press conferences, held in August, 2020, Delhi.

The Fundamental Nature of Legislation was threefold:

1. To prevent commercialization and trafficking of human organs in India
2. To classify and define the terms of first relative and relatives such as, mother, father, sister, brother, daughter, son, and wife who could give consent to donate organs without taking the prior approval from the government
3. To allow and include the definition of the ‘Brain Dead’ in the THOA

Amid the pandemic situation, most people have been avoiding hospitals and this makes organ donation more complicated. A major cause for this shortage is the lack of awareness among people about the process of donation. While several NGOs and public organizations are attempting to increase awareness

about this, a large part of the population remains clueless.

Several myths, linked with organ donations also impede the process in India, along with fears of disfigurement, non-acceptance of brain death, religious beliefs and migrant workers not having relatives, physically present at the time of organ donation procurement and to give their consent on time.

It is predicted and reported by the National Health Ministry of India that in India, approximately, half of a million Indians are religiously waiting for organ transplantation of their vital body organs such as, heart, kidney, pancreas, liver and so, on. It is but, unfortunate that most of them die before getting the chance and turn for their organ transplant operation. Due to such a huge waiting list, thousands of people have lost their lives.

There are also some of the cities and States in India who have shown their keen interest and indulgence to improvise the national and centralized-system of an organ donation registry portal in its digital form. But, unfortunately, this readily available data-base to check the availability of such life-saving organs is missing in India. India has only 3% registered organ donors: According to a 2019 report in The Hindu, only 3 per cent of the population transversely, 12 cities in the country have been registered to donate organs.

Bottleneck in the execution of THOTA, 1994:

The law based on The Transplantation of Human Organs and Tissues Act, 1994 prohibited the illegal and commercialization of human organs for almost 20 years ago. But unfortunately, it never had been prevented and prohibited in India, completely. The illegal selling and buying is still prevalent in India despite so many legal hurdles. There are many legal and political hurdles which have tarnished the execution of an organ transplantation regime. Some of them have been mentioned as under:

‘Consent’ and organ donation in cadaver donation can be briefed with the fact that the approval of the dead person is required to be obtained before the retrieval of the organs of that prospective donor. It is a relatable aspect that in order to get approval of the prospective donation, there are three dimensions and prospects to be taken into consideration. Firstly, ‘Mandated choice’, secondly, ‘opt-in’ and thirdly, ‘opt-out’. Our nation has significantly adopted the ‘opt-in’ type of

approval for the recovery and procurement of organs from a dead person.

The very basic and primary benefit of having ‘authorization’ concept is that it clearly mentions out the willingness of a living person who desires to donate his or her organ after the death. It has turned-out to be named as a confirmatory approach towards solving the issue of organ shortage in India even during the Covid-19 era. It also helps and mitigates the role of having the strong condemnation of ‘presumed consent’ approach.

The THOA, 1994 is primarily based-on the rule of ‘consent’ through ‘Authorization’. Such prior permission or grant to donate organs can be given in the form of writing and also, ideally in presence of two or more witnesses. One of those witnesses ought to be termed as, ‘near relative’. It is also mentioned in THOA, 1994 that apart from the near family members, the person, other than the family members in whose possession, the dead body lies, can permit a medical practitioner for the organ transplantation process for therapeutic purposes. Nevertheless, the criteria before such organ donation process, mandates and authorizes the appointment of a registered medical practitioner only.

Deceased Organ Donation and the Role of Relatives: According to the THOA, 1994, though the individual who wishes to donate his or her organ during his/her life-time, the ultimate decision of giving-away of his/her organs, still remains with near relatives. Therefore, to make the Act, convincing and effective, the provision of opt-in ought to be made effectual in order to respect the last wish of the dead person. This can be only possible through a public-awareness program regarding such organ donation. People should be given encouragements and appreciations for pledging their organs.

The principled question has been debated from the following perspectives:

A) Socio-legal problems:

- One of the most leading hurdles in the process of sensitization and the passive approach of Indian people with respect to organ donation is the lack of procedural knowledge. Moreover, the doctors and hospital staff are also not properly trained enough for timely execution, counseling of the

relatives and procurement of the organ and its preservation.

- In order to make the organ transplantation effective, the role of the Police department cannot be ignored. In case of any road accident, Police administration is the first initiators who deal with the seriously injured person. That is the reason due to which, they require to be given proper guidance and training. The Police department needs to understand the significance of brain death, especially with respect to road accident victims. They should not create unnecessary hurdles in order to issue No Objection Certificate (NOC) for the prompt and smooth functioning of organ retrieval. State like Tamil Nadu in India has demonstrated the best contemplation. According to this State, getting NOC is not required to be obtained from the police station where the mishap is registered. The nearest hospital jurisdiction shall be considered. The Organ retrieval process is still need to be streamlined in India.
 - According to ORBO (Organ Retrieval Banking Organization is the All-India Institute of Medical Science), its officials, another difficulty with cadaver donations occurs when it's a migrant worker. The permission of a spouse is the only consent, lawfully recognized in such a situation. However, families of most migrant workers live in villages and for that reason, getting appropriate consent is not always possible.
- B) Getting Nod and Consent from Relatives: (Social, Economical, Emotional and Spiritual Constraints):
- The practicality of Section 3(2) of the THOA is doubtful. It is difficult to put into practicality. The reason is that the near relatives of the deceased play a pivotal role in giving their final nod and approval for the donation of organs. The near relatives of the prospective donor are legally authorized to give their consent for organ removal. Therefore, sometimes, it becomes practically impossible to make-up their minds regarding such organ donation.
 - Taking prior approval and permission for such organ retrieval, largely depends upon the convincing capability of doctors and hospital administrators. Unfortunately, India is facing a problem in this particular arena. Lack of

sensitization and proper training of medical staff is missing in India.

- It is also a noteworthy fact that a patient's relatives show their reluctance towards giving-away the body of such deceased person. They fear of body disfigurement due to organ removal of the patient and due to their emotional trauma, it becomes relatively difficult to get them convinced.
- During this pandemic situation, patient's relatives fear of getting infected of corona virus which also has proved to be fatal for the organ donation regime in India. Moreover, it is also observed that the patient whose organ could have been retrieved for the needy recipient, sometimes, does not get represented by his/her near relatives on time. Due to this, many prospective organ donors get incremented or buried without the initiation of organ procurement.
- Disbelief towards medical-staff during Covid-19 has also arisen drastically during pandemic. Relatives of the deceased have started believing that due to Covid-19, the hospitals are charging them exorbitantly. It is very difficult for a doctor to making them convince that the patient who had not shown any symptoms of corona virus, is one of the ideal body for such noble act of organ donation. The distressed family of a deceased who died in a road accident, most probably, goes into a brain dead situation. Though his pulses, shall be working, the heart even though, seems to be in working-condition, in medical term, it has not been considered as the symptom of life. A brain dead person is a dead body, but to convince the same to the family of the deceased is the most difficult and emotional baggage being casted upon the medical staff in India.
- Likewise, written consent for organ donation, the post death of the potential donor can be granted in the life-time of the prospective donor. But, it becomes difficult for the hospital staff to put in to execution without taking near relatives into confidence.
- To determine the organ donation, it hugely depends upon the concept of 'nearest' relative v. 'near' relative in India. In order to ensure optimal use of organs of a deceased and the regulation against the misuse and human organ trafficking of human organs, it is mandatory to adhere to the

provisions, mentioned under the THOA. The patient's last wish to donate his/her organs, post death normally gets conveyed to near relatives. Therefore, the definition under Section 3(1A) (i) (ii) plays a very vital role in the organ procurement procedure. So, that the close person may be able to express the deceased's wishes about organ donation.

II. CONCLUSION AND RECOMMENDATIONS:

It is pertinent to note that as per National Health Policy, 2017, the basic purpose of this Policy is to elucidate, notify, build-up and giving importance to the role of the Indian government for the improvisation of the health sector in the nation, especially, in the arena of organ donation. In India, this harsh reality can also not be ignored that the people possess certain pre-conceived notions in their mind about organ donation, post their death. In India, the roots of spiritual, cultural and religious beliefs are stringent and complex as compared to certain European countries. Public sensitization and creating public awareness is mandatory in order to carry out the effectual execution of a cadaver donation regime in India. It is also observed that the ideology of organ donation differs from a country to country and religion to religion. As far as the Indian perspective, generally, Indian people's approach towards cadaver donation is not that positive. People feel hesitant in the name of their cadaver donation approach.

In the matter of brain death of a dead person, it is an essential ingredient and criteria to get the Covid-19 testing done. There are the chances wherein, the possibility of Uncontrolled Donation after Circulatory Death (DCD) is ignored during this lockdown situation. It becomes next to impossible during the pandemic emergency to retrieve and procure the organs within the stipulated time. The situation has become worsen due to the fact that the Living donations are only possible when such donors have not commuted outside the lockdown zones of the country in the preceding 21 days and also, the tests have to be declared as, 'negative' for COVID-19 virus before the transplantation surgery.

Although in India, usually all religions have allowed organ donation and consider this act as a pure and virtuous idea. But, unfortunately, Indian masses are still reluctant and feel hesitant to donate organs after

death. Moreover, people use spiritual excuses and misconceptions for avoiding the organ donation in India. Thus; permission for cadaver donation by the family of the deceased has still not- gained impetus progress.

It is recommended that Indian medical system should encourage the concepts of opting-out and presumed consent which shall utilize the options such as, using dead bodies from traffic accidents Also, the patient's brain dead condition is also considered as an ideal option for curbing the organ shortage issue. At the same time, one must also not forget the contribution of NGO's in creating strong awareness amongst Indian people about contributing in such noble act of organ donation during the COVID-19 situation.

With little relaxation in stringent protocols of lockdown and support of the medical-staff, India can definitely achieve the target of a human organ donation regime in a hassle free manner.

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- [4] Business/organ-donation-and-the-covid-pandemic20200825115829/
- [5] Meaning of the concepts, 'Opt-in' or 'contracting in' sort of approval require that the potential organ donor ought to be given ability for the taking away of his organs or tissues, or, if he indicates nothing in his life span, his near relatives can permit the removal of organs. The next type of approval is the "Opt-out" consent. This type of consent does not require the straight approval from the donor or the next of a family. An "opt-out" or "contracting out" system is one which presume consent for the removal of an organ and permit organs to be detached after death for transplantation, unless an suitable objection is made. Whereas, the third type of consent i.e., 'Mandated choice' is a legally

mandated result. In this mandated choice, all adults would be mandated by law to point out their requirements regarding use of their organs after demise.

- [6] Section 3 (1) of THOTA 1994, available at <http://lawmin.nic.in/ld/PACT/1994/The%20Transplantation%20of%20Human%20Organs%20and%20Tissues%20Act,%201994>, pdf, visited on May 4, 2017.
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