



ORGAN DONATION: A CHANCE TO LIVE POSTHUMOUSLY, LEGAL ISSUES INVOLVED

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Never forget this, in the midst of your diagrams and equations: concern for man himself and his fate must always form the chief interest of all technical endeavors. — Albert Einstein¹

- 0 Fritz H. Bach, Adrian J. Ivinson & Christopher Weeramantry, Ethical and Legal Issues in Technology: Xeno transplantation, 27 Am. J.L. & Med. 283, 283 (2001)
- 1 Someone with current active cancer cannot become an organ donor. However, it may be possible for people with certain types of cancers to donate after three years of treatment. It may also be possible to donate eyes and some tissue in these circumstances.
- 2 In rare cases, the organs of donors with HIV or hepatitis C have been used to help others with the same conditions.

Organ donation is the process of removing tissue or organ and placing it into another/needy person surgically. Organs and tissues that can be transplanted include Intestine, Cornea, Middle ear, Skin, Bone, Liver, Kidney, Pancreas, Heart, Lung, Bone marrow, Heart valves, Connective tissue and Vascularized composite allograft (transplant of several structures that may include skin, bone, muscles, blood vessels, nerves, and connective tissue). It is usually transplanted because other person is having damaged organ due to disease or injury. Transplantation is boon to many lives and is

one of the greatest developments in field of modern medicines. The unfortunate relation is the ratio of organ donors and number of people who actually need it is very poor. Even after families and social notions allow there is very small number of people who actually can donate due to various reason. It mostly depends on relief on donors and their families agreeing to donate.

There are three different ways to donate. These are:

Donation following brain death (DBD): When a person is diagnosed as dead through Neurological Criteria testing. This person would have had a severe brain injury and permanently lost the potential for consciousness and the capacity to breathe. This may happen even when a ventilator is keeping the person's heart beating and oxygen is circulated through their blood.

Donation following circulatory death (DCD): When a person is diagnosed as dead through circulatory determination. This is when a person has irreversible loss of function of the heart and lungs after a cardiac arrest from which the person cannot or should not be resuscitated. It can also be the planned withdrawal of life-sustaining treatment from a person cared for in a critical care environment.

Living donation: Whilst you are still alive you can choose to donate through a medical operation a kidney (most commonly), in some cases a small section of your liver or lung or discarded bone from a hip or knee replacement and amniotic membrane (placenta).

Medical conditions



Having an illness or medical condition doesn't necessarily prevent a person from becoming an organ or tissue donor. The decision about whether some or all organs or tissue are suitable for transplant is made by a medical specialist at the time of donation, taking into account your medical, travel and social history. There are very few conditions where organ donation is ruled out completely. A person cannot become an organ donor if they have or are suspected of having Creutzfeldt-Jakob Disease (CJD), Ebola virus disease, Active cancer 2 and HIV or hepatitis C3 .

Challenges

Organ donation is greatest challenge that community faces especially in field of transplantation and medicines.

There is widespread community unawareness and reluctance to donation of organ in countries all over the world mainly in Africa, Asia and Latin America, even when appropriate legislation exists. Factors to which are indigenous cultural and religious beliefs and values and technical/financial constraints, paucity of skilled staff, inadequate infrastructure. There is lack of general knowledge and absence of organ banking facilities or medical advancement as whole. Some countries lack social trust on successful organ and transplant programme also there are inadequate laws and legislation. All of these need to be remedied to increase organ donation.

The social unawareness is related to many myths that are wide spread in community. In general organ donation and transplantation is seen as big sacrifice made for other one

and a fear that donor card possession will abduct them from extent of health care that the patient receives as it is barrier to increased rate of donation. There is also lack of medical infrastructure which doesn't let the society to have trust on it. It is still thought to be risky business. Nothing but public education that uses effective strategy to sensitize the cultural and emotional area for people can help create a change. Public awareness about organ donation should use techniques to make people understand that it is of common interest to have adequate supplies of organs as every person is potential donor as well as recipient. Therefore awareness programmes must focus transparently on ethics, access and safety. Possible roles of – (1) seek ways to optimize the donation of organs, tissues and cells from deceased donors; (2) support and facilitate qualitative, empiric research to comprehend resistance to donation and help find indigenous ways and local resources to increase donation; and (3) encourage and facilitate governments to have appropriate legislation and oversight mechanisms in place.

People who are brain dead don't have many hopes to life and donating organ in return helps many lives. It is in fact mandatory to discuss about such issues and learning about them. The mechanisms should also be well equipped with better healthcare professionals and OPO staff on 24 hour a day, 7 day a week basis. It is necessary to build the sufficient trust on the system and getting registered as an organ donor. Family of brain dead patients should be made aware that how their mandated choice will mean to recipient and hopes of new life to someone who has registered as needy. Mere forcing



them to choose to be organ donor does not capture the potential of mandated choice and weaken the argument for it. A broad-based and multidimensional educational campaign is needed that confronts issues around death and dying, debunks the myths and misperceptions surrounding organ donation, and emphasizes the benefits of organ donation. Pilot tests of mandated choice could be reconsidered in the future when there is a broader and more accurate understanding of organ donation among all sectors of society. If public education is successfully intensified, however, mandated choice may prove to be unnecessary. Deceased donation after brain death have slowly started happening in India. The opportunity to decide whether to be an organ donor should be a part of end-of-life decision making. Patients and their families should be offered this opportunity as standard end-of-life care. For the organ donation process to be fully integrated into end-of-life care, a wide range of healthcare professionals need enhanced awareness of and training regarding the organ donation process.

India has a fairly well developed donation programmes; however, donation after brain death has been relatively slow to take off. Most of the transplants done in India are living related or unrelated transplants. To curb organ commerce and promote donation after brain death the government enacted a law called "The Transplantation of Human Organs Act" in 1994 that brought about a significant change in the organ donation and transplantation scene in India. Many Indian states have adopted the law. Despite the law there have been stray instances of organ trade in India and these have been widely

reported in the press. This resulted in the amendment of the law further in 2011.

Laws and Rules Governing Organ Transplantation in India

Human organ and tissue transplantation was started in India in 1962. Initially, the organ transplant was unregulated, and organ trafficking was rampant. The primary legislation related to organ donation and transplantation in India, Transplantation of Human Organs Act, was passed in 1994 and is aimed at regulation of removal, storage and transplantation of human organs for therapeutic purposes and for prevention of commercial dealings in human organs. This has been subsequently amended in 2011, and new rules came into force in 2014. General public as well as scholars in field of law are not aware of the act.

In India all the issues related to medicines and health care are governed by each state itself and there is no interference of central government in this regard. The act came into force on request and initiation of Maharashtra, Himachal Pradesh and Goa (they adopted it by default). It was later adopted by all the states (except Andhra Pradesh and Jammu and Kashmir). There were huge number of cases of commercial dealing and organ trafficking in India despite all the regulatory frameworks and legislation. An amendment was kept forward by state of Goa, Himachal Pradesh and West Bengal for this act in 2009. It addressed inadequacies in the efficacy, relevance and impact of the Act. The amendment to the Act was passed by the parliament in 2011, and the rules were notified in 2014. The same is adopted by the proposing states and



union territories by default and may be adopted by other states by passing a resolution.

There are two methods of being able to donate even after dead (i) if People can pledge their organs during their lifetime if they want their organs to be used after death or (ii) if they become brain dead and relatives agree to donate its organs. For former they need to fill form 7 pledging their desire. After the death and certification of brain stem death of the person, it is mandatory for surgeon or medical practitioner to ask near relative or person in lawful possession of the dead body if he has in the presence of two or more witnesses (one of which at least should be near relative) signed the specified form 7 before his or her death for removal of his organ or tissues after his or her death for therapeutic purposes. Also if he has not signed such option is given to relative if he is interested in donating the organs. The consent of legal possession holder of dead body or near relative is required even if he has signed the pledge form stating to donate his/her organs and tissues.

For the certification of brain death approval by a panel of doctors is required including neurologist or neurosurgeons, anesthetists, critical care specialists, intensivist, physicians, or surgeons. New rule in 2014 has now made changes for facilitation of brain death declaration. The brain death certification is now done by four doctors (i) treating doctor (II) neurologist/neurosurgeon/physician, intensivist, and anesthetist (III) hospital administrator and (IV) resident doctor of the hospital.

for brain dead donor form 8 and 9 are required for donation and committee's permission is granted in format given in form 10. All the maintenance is borne by the institution, government or nongovernmental organization, recipient (it is mainly as per decision of respective state government so it differs) and not by the donor family. Maintenance includes retrieval of organs and tissues and transportation charges.

The allocation of organ has a hierarchy to be followed going from regional list, state list, national list, person of Indian origin and to foreigner. Also organs and tissues of deceased donors are given in order of priority which has order of not having suitable donor in near relative, having near relatives as donor but they have refused in writing to donate, those who have suitable living donor but they have declined to donate in writing.

Procedure for donation of organ or tissue in medicolegal cases – Medicolegal cases (MLC) are also acceptable for organ donation, but proper protocols have to be followed as per the THOTA. After the brain stem death declaration and consent to donate organs from a brain stem dead donor are obtained, the registered medical practitioner of the hospital requests to the Superintendent of Police or Deputy Inspector General of the area either directly or through the police post located in the hospital to facilitate timely retrieval of organs from the



donor, and a copy of such a request is sent to the designated postmortem doctor of area simultaneously. It is ensured that, by retrieving organs, the determination of the cause of death is not jeopardized. The medical report is prepared at the time of retrieval by retrieving doctor and is taken on record in postmortem notes by the registered medical practitioner doing postmortem. The postmortem registered medical practitioner should be present at the time of organ or tissue retrieval even after office hours. In case, retrieval hospital is not doing postmortem, they arrange transportation of body along with medical records, after organ retrieval, to the designated postmortem center, and the postmortem center undertakes the postmortem of such cases on priority, even beyond office timing, so that the body is handed over to the relatives with least inconvenience.

We have governmental bodies in all level (regional, state and central) but we don't have link between all of them which makes it a difference as we don't have big data analysis. It would have served as source of data for matching of organ donor countrywide also it will help us assess outcomes and help in making more transparent guidelines and paving way for improving practices. The digitalization would also help a lot in simplification of process and making it more transparent. The development of this link is also highlighted in act for creating a big circle for demographic, clinical laboratory and follow up data of patients waiting for transplants and donors available(living or dead) also patient who have been transplanted already in past.

Conclusion

Indian medical field is progressively working towards this technology and its success rate. It has now better facilities and better surgeons in the field the transplantation and organ donation. The transplantation and organ donation programmes are not only aid to needy but also to the society at large. The transplantation act's present form has evolved over last decades to be more flexible and life changing. As a society we should be aware of such rules and no more make the reluctance of donation a hindrance in the way. This will go a long way in avoiding legal hassles in day-to-day transplant practice. It is an opportunity for human mind to live posthumously and be savior to lives of not only one person but families. It is not materlistic and is indeed a virtue.
