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Analyzing the Efficiency in Implementation of Act Relating to Organ Transplantation

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ABSTRACT

Human organ and tissue transplantation was started in India in 1962. Initially, the organ transplant was unregulated, and organ trafficking was rampant. The act governing the transplantation was passed in 1994. This has been subsequently amended in 2011, and new rules came into force in 2014. Many of the students as well as practicing physicians are not aware of the act as it is generally not a part of the curriculum. This article highlights the important components of the act and focuses on what all physicians involved in transplant should know about the legal aspects of transplantation. Organ Transplant has been considered to be one of the greatest achievements in modern medical field. It is the transfer of tissue or organ from a person who is alive or whose life expectancy is nil to a person who is injured or ill to restore their health and functioning but this depends on the availability and people who can access it. Nowadays, they are considered not to be a procedure but a treatment. Transplantation of Human Organ and Tissues Act in the year 1994 has been introduced, but there were issues regarding the implementation of this Act, as even though the act has been enacted commercialization in human organs and illegal organ trade is taking place, this could be due to the high prevalence of poverty, illiteracy i.e. lack of knowledge to understand the law and corruption in the Country. This issue of not proper implementing of the act here in this paper is explained by doing extensive research by using tools like various research papers, with help of articles, and certain books.

I. INTRODUCTION

Every person in this country has right to remain healthy and this right has been also considered as an integral part of Right to Life under article 21 of the constitution. Protecting human life and sustaining them is the most important to any nation.² Organ Transplant act has also the same sense of purpose due to which it comes under the ambit of this article.

Organ Transplant has been considered to be one of the greatest achievements in modern

¹ Author is a student at University of Petroleum and Energy Studies, India.

² *Parmanand Katara v. Union of India*, AIR 1989 SC 2039.

medical field. It is the transfer of tissue or organ from a person who is alive or whose life expectancy is nil to a person who is injured or ill to restore their health and functioning but this depends on the availability and people who can access it. Nowadays, they are considered not to be a procedure but a treatment.

To regulate this process of donation, retrieval and transplantation, Transplantation of Human Organ and Tissues Act in the year 1994 has been introduced, but there were issues regarding the implementation of this Act, as even though the act has been enacted commercialization in human organs and illegal organ trade is taking place, this could be due to the high prevalence of poverty, illiteracy i.e. lack of knowledge to understand the law and corruption in the Country. This issue of not proper implementing of the act here in this paper is explained by doing extensive research by using tools like various research papers, with help of articles, and certain books.

II. NEED FOR THE IMPLEMENTATION OF THE ACT

Though there are many laws for governing and safeguarding health of individuals, organ failing and organ disfunctioning has took toll on the medical practitioners, but as the medical field has advanced over its course procedures of transplant of organ has become effective and the expectancy of life has got a new hope. There are many organs which can be donated, organs having a pair can be donated as one can sustain with just another pair, there are organs which can be donated when the person is alive and there organs which can be donated only when the person is deceased. To facilitate this process and to protect the interests of the donors, The Transplantation of Human Organs and Tissues Act, 1994 has been passed.

The THOTA, 1994 was enacted when there was no legislation in the country governing the organ transplant. The act aims to provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs and for matters connected therewith or incidental thereto³.

Proper implementation of the act is required as there are 3000 to 4000 people dying waiting for kidney in US, if that is the case in USA, in India it will be at least thrice or four times that, these premature deaths not only effect the life of the person who is waiting for the kidney but whole family as in India families depend on one person, though large number of hospitals are registered to perform such procedures of transplantation of organs only 20952 transplants have been performed from 1971 to 2011, which is a huge gap between demand and supply, rich and

³ Preamble of The Transplantation of Human Organ Act, 1994.

higher class people have the means to afford such organs but what about the people who earn less, and also foreign nationals come to India for purchase of kidney and surgery as it is relatively cheaper for them than their country and Indians as they are foreigners they are preferred over.⁴

III. ABOUT THE ACT

Some of the main provisions of the THO act have also been amended for proper implementation of the act through the bill which was passed in 2011 which later has become the act. Some of the main provisions of the act are as following:

- The act provides for donation from a living person and non-living person as well, and the persons who are allowed to donate are mother, father, brother, sister, son, daughter who are termed as “near relative”⁵ which later got amended and included grandparents and grandchildren too. The near relatives will have to prove their relation by showcasing any documents or through genetic testing, and if there are no near relatives and a person wants to donate to the recipient out of affection, he will have to take prior approval of the Authorisation Committee.⁶

- The act provides for brain-stem death where removal cannot take place unless they are certified by board of medical experts where one is registered medical practitioner and a neurosurgeon or neurologist and an independent registered medical practitioner nominated by medical practitioner who is in charge of the hospital⁷ which later got amended and added a surgeon or physician and an anaesthetist or intensivist who are approved by Appropriate Authority who are on the nominated panel.

- The main feature of the act is the Authorisation Committee and Appropriate Committee which will be constituted in each state or union territory. Central government will appoint appropriate authority for Union Territories and State government for respective states. The main role of Authorisation committee is to look after the process of accepting and rejecting the allowance to donate organs to a person who is not near relative. Also, to look after that there are no commercial dealings and that donor is not donating for monetary purposes. Also, it holds inquiry on the application made by donor and the recipient in case of recipient been not near relative and if AC is satisfied then it can accept and if not reject for transplantation of organ.⁸

⁴ Naik Jagadeesh & Narayana Rao v., *Kidney Transplantation in India: Hopes and Despairs A scientific study of Ethics, Commerce and Law*, 35 J Indian Acad Forensic Med. , 171 - 173 (2013)

⁵ The Transplantation of Human Organs Act, 1994 § 2(i)

⁶ The Transplantation of Human Organs Act, 1994 § 9(3)

⁷ The Transplantation of Human Organs Act, 1994 § 3(6)

⁸ The Transplantation of Human Organs Act, 1994 § 9(5)

Role of Appropriate Authority is to regulate the removal, storage, and transplantation of human organs. It gives the license for registration of hospitals for period of 5 years to perform such activities and also renew such registration, and also if found out that the hospital is working against the provisions it can suspend or cancel the registration, it inspects the hospitals periodically and also conducts investigation if any complaint has been filed against the hospital.

- Also, the Act has provided certain procedure and certain forms such as a form in which the donors consent to be given in, which consists of identity of proof, photographs, certificates.

Authority for removal of Organ

- Regarding the authority to give access to the organs of the deceased, the donor might give permission before his death amongst two or more witnesses as specified in Form 5 to the medical practitioner unless the person having lawful custody of the body feels or has a sufficient reason to believe that donor has revoked the consent. If the donor has not given the consent nor denied to give consent before his death, person lawfully having possession of the body can authorize for the removal or transplantation of the organs as specified in Form 6.⁹

- The removal or transplantation above has to be performed by only the registered medical practitioner and no one else, and for this medical practitioner shall satisfy himself that there is no scope of life in the body by examining and in the case of brain-stem death the death is certified and signed by all members of Board of Medical Experts as in Form 8.¹⁰ If the person who is Brain-stem dead is of not more than 18 years and the parents of such person has authorized for the process of removal of organs for therapeutic purposes, such authority should be given as specified in Form 9 and signed.

- Medical practitioner should also satisfy himself that the donor has given authorization for removal of organ in Form 1(A) if the donor is a near relative according to section 2(i) of the act; Form 1(B) has to be used for spouse and Form 1(C) for any other person or relative. Medical practitioner has to check if the donor is capable to donate his organs and then the medical practitioner has to sign a certificate as in Form 2, also confirm if the donor is close relative of the recipient as certified in Form 3 and has signed Form 1(A).¹¹

- In order to perform the process of transplantation medical practitioner in charge should be satisfied by examining the relationship between donor and recipient, and donor has to submit

⁹ The Transplantation of Human Organs Act, 1994 § 3

¹⁰ Id

¹¹ Sunil Shroff, *Legal and ethical aspects of organ donation and transplantation*, Indian J Urol. , 348 - 355 (2009)

an application in form 10 with recipient and such so called donation has to be accepted by the competent authority.¹²

Offences and Penalties

- If any person who is working in the hospital associates or helps in removal of organ without the authority shall be punishable with imprisonment for term which may extend to 5 years and fine which may extend to ten thousand rupees which has been amended and made imprisonment up to 10 years and fine 20 lacks and also added removal of human tissue without authority for which imprisonment will be up to 3 years and fine up to 5 lacks. Also if the person who is convicted is the registered medical practitioner then he will be taken to appropriate authority to the respective State Medical Council for taking appropriate action which might be removing of the name from the register of council for 2 years which is now 3 years for the first offence and for the next offence it will be permanently.¹³

- Also, the new act has added punishment for those people who make false documents as to showcase themselves as the near relatives to the donor so that the organs get transplanted, and the punishment for them is imprisonment up to 5 to 10 years and fine 20 lacks which can be extended to 1 crore.¹⁴

- Also, the act has provided for the punishment for commercial dealings by people in human organs, if any person received or made any payment for supply or offer to supply the human organs, or offers to supply human organ for payment, initiates or negotiates any arrangement involving the payment for the supply of human organ, publishes or distributes any advertisement relating to the above shall be punishable with imprisonment minimum of 2 years which may extend to 7 years and fine minimum of ten thousand rupees and may extend to twenty thousand rupees.¹⁵ Also the new act has added punishment for supplying tissue for payment which is imprisonment up to 1 to 2 years and fine 5 to 20 lacks.

Other Amendments

- As now the act not only talks about organs but also the tissues, they have added the definition of tissue which is a group of cells, except blood, performing a particular function in the human body.¹⁶

¹² Id

¹³ The Transplantation of Human Organs Act, 1994 § 18

¹⁴ The Transplantation of Human Organ Act (Amendment), 2011, <https://www.mohanfoundation.org> (last visited Oct 8, 2019)

¹⁵ The Transplantation of Human Organs Act, 1994 § 19

¹⁶ The Transplantation of Human Organs Act (amendment), 2011 § 2(oa).

- New concept of Transplant Coordinator has been introduced who is a person appointed by the hospital who will coordinate regarding the matters relating to removal or transplantation of human organs or tissues or both and for assisting the authority to medical practitioner under section 3 of the amended act.¹⁷

- Human Organ Retrieval Centre has been added which means a hospital having adequate facilities for treating ill patients who have the very much potential to donate organs just in case they are dead and also which is registered according to section 14 of the act.¹⁸

- Authorisation Committee will not allow transplantation of organ if the donor and the recipient are from different nations i.e., one is from foreign country, but if both of them are near relative then approval of Authorisation Committee is required.¹⁹

- No organs or tissues can be removed from a minor before his death for the process of transplantation but familial donation can take place for regenerative cells when a comparable adult donor is not available and also kidney transplants between identical twins can take place.²⁰

- No organ or tissue shall be retracted from a person who is mentally ill or mentally challenged before his death.²¹

- Now there is an Advisory Committee which shall be constituted for period of two years to give advice as the name suggests or to give aid to Appropriate Authority to discharge its functions.²² This Advisory Committee shall also consist of representation from any Non-Governmental organization, legal advisor, medical expert, administrative expert, social workers, and specialist in the field of human organ transplantation.

- Now there are hospital level, state or district level, Authorisation Committees, for which central government will prescribe composition and actual appointments will be taken by the State governments.

- The power of the appropriate authority will be as of a Civil Court²³ so the appropriate authority if in case of any investigation may summon people for information, take evidences, issue search warrants etc.

- National Organ Retrieval, Banking and Transplantation Network by National Organ and Tissue Transplant Organization has been introduced so that nationwide network is

¹⁷ The Transplantation of Human Organs Act (amendment), 2011 § 2(q)

¹⁸ The Transplantation of Human Organs Act (amendment), 2011 § 2(ha)

¹⁹ The Transplantation of Human Organs Act (amendment), 2011 § 9 (1a)

²⁰ The Transplantation of Human Organs Act (amendment), 2011 § 9 (1b)

²¹ The Transplantation of Human Organs Act (amendment), 2011 § 9 (1c)

²² The Transplantation of Human Organs Act (amendment), 2011 §13a

²³ The Transplantation of Human Organs Act (amendment), 2011 §13b

established which will include all the transplant centres, retrieval centres which will maintain the list of patients who are in need of organs and type of organ they need so that a large database is formed due to which functioning will be smooth in the future.²⁴

- National Registry will be maintained by the Central Government which will consist of the names of the recipients who want transplantation of organ, and the government will provide seeing the availability regardless of their financial position.

IV. REASON FOR THE SCANDALS

India is the largest democracy with largest population in the world. India runs on politics and the dynamics of the country is very drastic as rich becomes richer and poor becomes poorer. There are many factors due to which scandals are being taken place with regards to the transplantation or trade in human organs. These factors might be the wrong doing of the so-called institutions or the lack of proper implementation of the legislative provisions by the government which can cause due to corruption, and the major factor is people in general who are not aware of these acts and people who are below poverty line who for money can go to any extent, even sell their organs.

In India, due to the mixture of the factors like poverty, corruption and very poor infrastructure for implementing laws like The Transplantation of Human Organ Act, a separate market for trading organs has raised. Moreover, kidney trading is at peaks in the country, we can see so many scandals right from Amit Kumar scandal to Apollo Scandal.

Even to ensure that there should be transparency in allocation of organs, India became signatory to 63rd World Health Assembly where it promotes such objective, and also India has launched NOTTO i.e., National Organ and Tissue Transplant Organization whose major purpose is to give a systematic procedure regarding organ allocation by maintain lists and maintain networks with all similar organizations and yet scandals are happening. It clearly states that Rich cannot jump the waiting line and allocation will be as per the list and registration time, and also states wealth, race or gender of person is in no way effecting the allocation²⁵, and yet we can see instances where rich and foreigners are preferred over normal citizens. The above revelations will be discussed briefly by observing certain scandals which happened in the country.

Basically, in India organs can be donated or retrieved from deceased bodies and can be donated by the person living to near relatives, or to spouse or any person in the form of affection or emotional attachment but not for any payment or monetary purpose. There is a huge process

²⁴ *Supra* note 13.

²⁵ <https://www.notto.gov.in/faqs.htm>

for donation of kidneys such as documentation, checking compatibility between donor and the recipient, and yet kidney trading is on rise in the Country.

In the case of Dr. Suresh Trivedi who was a senior surgeon in Mumbai at Bombay Hospital and Medical Research Centre, where it was stated that he had connections with agents who would find people who are poor and are in need of money so that they can be influenced in donating their kidneys for the money. But donation by a donor who is not a near relative is not allowed as per the Human Organ Transplantation Act, 2011 which states near relative is only brother, father, sister, mother, grandparents and grandchildren.²⁶ Due to which forgery of documents used to take place in order to make the donors near relative or make the doctors believe that the donation is out of pure emotional attachment and not for monetary value. This was the major loophole in the Act.²⁷ But due to which amendment took place and penalty has been imposed for forgery of documents.

Similar to the above case, kidney trade happened in the case of Delhi's Apollo Hospital which is one of the largest private hospitals in the country, where two assistants have forged documents and got donors recipients who are willing to pay any kind of amount. But the doctors say it's not their duty to investigate into the documents which they get, which is true to an extent. Something has to be done in this regard.

The number of Kidneys donated by the persons who are alive are more than the number of kidneys donated by deceased, which also could be the due to lack of awareness as families of brain-dead patients are very keen on not giving the organs from the deceased. According to the Indian Transplant Registry 21,395 kidney transplants have taken place since the year 1971 but out of which only 783 were donated from the deceased people.²⁸ There is a huge gap in the demand and supply in donation of organs especially kidneys.

One of the Largest Scandal in the country was done by Dr Amit Kumar, which is also called the Gurugram Scandal. It is the most disappointing case for not only medical sector but also the Executive system of the Country. Dr Amit Kumar was a large kingpin in the trading of kidney as he started trading in Dehradun, Uttarakhand, by opening a hospital. He has been arrested several times, still managed to come out of the prison, used many aliases or names, and has a large network all across the country. His whole family especially his brother was also included in such racket. Wherever he goes, he used to start afresh business; complaints

²⁶ *Supra* note 5

²⁷ *Supra* note 11

²⁸ Apollo Transplant Scandal Indian Express, <https://indianexpress.com/article/explained/delhi-kidney-racket-illegal-organ-trade-apollo-hospital-2838263/> (last visited Jun 7, 2016)

against him came from Dehradun, Maharashtra, and also Guntur. He fled to Nepal, but CBI had convicted and gave punishment of 7 years rigorous imprisonment and 60 lacks fine. He got bail very soon and even when he was imprisoned, he conducted his business through his agents, as soon as he came out of jail, he started his business again. Later in Gujarat a kidney scandal has happened and it was connected to Dr Amit Kumar and Gujarat police has put reward on him as he escaped police custody.

Previously he was arrested in Faridabad for negligence in treatment which caused death of three Turkish men, later it was found out that he was not even qualified to perform procedures such as extraction of kidneys as he was ayurvedic practitioner. His main business was to get poor people across the country and transplant their kidneys to rich people, and they used to burn all their documents too.

Another major problem in the country which the Act could not rectify or solve is the amount of brain death organ transplantation which is being utilized by the higher class or people having money and not to the ordinary people who might actually require such organ the most. Not only this, according to an enquiry done by Tamil Nadu State Government it was found out that organs from deceased were transplanted to foreigners as they were preferred to nationals of India.²⁹ The main reason behind this is number of Indians in the waiting list and mind-set of Indian citizens as they want transplantation only by their known surgeon who might or might not be available and also the competence of the citizens to donate is not much high, also in India transplanting to foreign people is considered to be somewhat an achievement.

It has become clear that the system prevailing in India regards to organ transplantation is in favour of people who are well off, as we can see in the case of V.K.Sasikala, organs were needed for her husband and as she was close to then Chief Minister of Tamil Nadu Jayalalithaa, received the required organs from a deceased donor who mysteriously came to Chennai from Thanjavuru, it was said that the person who is deceased is not that well off to fly through airplane as he was flex board printer.³⁰

For happening of all this, reasons given were that suitable Indian recipients are not available for the organs in the market and to not waste such organs they are been transplanted to the foreigners, and also to promote so called medical tourism in the country. People who know

²⁹ Does India's organ transplant system favour foreigners and the rich? Business Standard, https://www.business-standard.com/article/health/does-india-s-organ-transplant-system-favour-foreigners-and-the-rich-118101500080_1.html (last visited Oct 15, 2018)

³⁰ *Supra* note 28

about how all this procedure of deceased donation works will also know what it takes to find a suitable recipient when organ turns up, so how is it that the foreigners who stay far away from the country, who might also have high end technology compared to our country are getting the organs, it is clear that getting required organs in other countries is difficult and easy in India as there are so many organs lying around and to get them these foreigners come to India, even though they have more efficient technology.

The solution for this could be promoting of organs transplantations in local hospitals where normal prudent or ordinary man go to and the organs in the market should not go to foreign nationals at all unless and until requirement in India has been fulfilled.

V. REASONS FOR NON-PROPER IMPLEMENTATION OF THE ACT

There are quite a few reasons why the human transplantation act in India is not been implemented properly, firstly, people or the citizens of the country are not aware and have no data regarding the transplantation, as most of the states don't even know that a committee is being appointed along with advisory committee who will look after the process of organ donation and transplantation, states like Tamil Nadu and Kerala have not been aware of this amendment and also they have not adopted too, for a larger picture that is proper information regarding the availability of organs which is one of the objective of the Act, adoption by states are necessary.³¹

Also, medical practitioners who are allowed to perform procedures such as transplantation of organs are not approaching the families of the deceased to obtain the consent for organ donation, even if they are the number of such approach is considerably very less, many of the hospitals be it private or public do not maintain any records as such whether families of deceased has been approached. This is a mandatory procedure to be followed by the practitioners but they do not do it, doctors are the ones people in this country value as they save lives, for which doctors will have to promote organ donation and make the people aware of the existing scenario and how one organ of the deceased can save another life.

This unrelated market trade or illegal trading of organs takes place not only because of lack of awareness but lack of proper system, states have not been adopting to the latest amendments of the laws, due to which most of the organ transplantations in that state remain unmonitored and due to which this so-called black market rises.³²

³¹ India's Organ Transplantation Law Requires Better Implementation, <https://sites.ndtv.com/moretogive/indias-organ-transplant-law-requires-better-implementation-as-some-recommendations-remain-unimplemented-2177/> (last visited Nov 4, 2018)

³² Id

Another major problem for not implementing the act properly is defect in the interpretation of the law by various people involved in the process of transplantation of organs such as Authorisation Committee, medical practitioners. Person can donate to any person who is not near relative but by reason of affection or attachment towards such recipient can donate organ only with prior approval of Authorisation Committee.³³ This provision has been interpreted in wrong way many times and also has been misused a lot of times.

In the case of medical practitioners the main question is whether there is any provision or any clause in the act which will help the recipient where his own family or near relative is not willing to donate any of their organs to the donor or if their organs are not suitable for transplanting into the donor, also the contention of the medical practitioners is that of true essence and meaning of true affection, it is the Authorisation committees job or responsibility to find out the true affection and not that of the medical practitioner. Also, there is one more problem from the recipient side, he would find an instant donor saying he is willing to donate with affection as per the clause when there is no near relative but the donor is being paid here and which is not told to the authorisation committee, but now this same donor if there is default in the money payable will go and complaint to police, police not being aware of the act that the money paid to them if illegal, will come and enquire with doctor and the people who are involved in it.³⁴

Another problem is, as we know transplantation act runs on the process of consent, the donor can consent and tell what has to be done with his body after he is dead, this is called authorisation. Also, the consent can be given by the near relative only if he believes that the consent is not being revoked before the death of the deceased donor, and also if not the near relative, person who is in possession of the body can give the consent regarding the transplantation of the organs.³⁵ But how far is this consent being followed, the provision of this free will of the donor to give consent is not that efficient because his relatives can disqualify such consent stating they do not want any organs to be retrieved from the deceased body, the provisions have to be more effective in order to determine the requirement of the deceased person. Here the consent of the near relative is given more priority over the consent of the donor himself as once the near relative does not accept the retrieval and transplantation it won't happen.

The definition of the near relative is also a major problem as near relative described in section

³³ *Supra* note 6

³⁴ *Supra* note 11

³⁵ *Supra* note 9

2(i), 9(1), 3(1a)(i)(ii)³⁶ it says near relative is a person who can be father, mother, brother, sister, spouse, grandparents, grandchildren, daughter, son, if they are not there any kin person. What if the relatives are not in talking terms with the recipient or what if they stay too far that they cannot donate organs on time, due to which the term's meaning and definition has to be modified by adding close associates and friends to the family in the section.

End stage organ failure (ESOF) patients are excluded in the Act, as these patients who do not have any near relative or families, who might be an orphan, may not get organs from relative but their sole hope to get organs is cadaver donations, and if this cadaver donations system is not perfect all these patients will have to wait for their turn and might die waiting. There is no provision regarding such patients, what about their fundamental right in the constitution which says right to preserve their health under article 21.

One other major concern could be the organs being wasted after the autopsy of the body or the post mortem of the body. Police would send the body mostly to government hospitals for post mortem for clinical reports, after the post mortem the body would be sent to mortuary or disposed of. So for these bodies, post mortem could be done in private hospitals because these private hospitals have the tools for conducting post mortem as well as transplantation of organs and also according to section 21 of IPC and Section 2(c) of the prevention of Corruption Act, 1988 they have included doctors who perform autopsy at the request of police, they could be prosecuted. So as they can be made liable there won't be any hindrance.³⁷

Infrastructure is also one of the major sources of problem for implementation of the Act. For a procedure like this which involves retrieval of organs, transplantation of such organs takes a lot of equipment and labour, and all these might be not available on time. And most of the hospitals in the country India lack these facilities which would facilitate the process of facilitation, and also they lack proper transport facilities and personnel.

VI. SUGGESTIONS AND CONCLUSION

From the above paper we got to know how organ donation is taking place and we got a brief view what provisions are there in the Act to curb the commercial dealings in organs, and yet even after implementation of The Human Organ and Tissue Transplantation Act scandals and these dealings are still happening and we have a rough view now as to why this is happening. The THOTA, 1994 was enacted to facilitate smooth process of transplantation of organs to

³⁶ For reference see section 2(i), 9(1), 3(1a)(i)(ii) of the act

³⁷ Dr. Anju Vali Tikoo, *Transplantation of Human Organs: The Indian Scenario*, 1 ILI Law Review , 153 - 170 (2017)

persons who are suffering which could be organ failure too, to a large extent, the defect or the failure of the act would be because the way it has been implemented and interpreted by all the intermediaries who are involved in this process right from consent of deceased before the death to final transplantation of organ. There is a large gap between the demand and supply of organs in India and this could not be solved by the act as there is wastage of organs in the country, “with around 1,60,000 people dying in road mishaps in the country every year, the pool of potential brain-dead donors is large. In fact if all brain dead accident victims are declared donors, maintained and taken up for organ retrieval there would be no need for the living to donate organs to relatives.”³⁸

To curb such things amendments have been made to the act but due to certain external factors as discussed above the act is not being able to be implemented properly. These external factors be it illiteracy or lack of awareness. First thing for proper implementation has to be from governments side, they will have to provide financial support to the people who are below poverty line so that they don't trade their kidneys for payment, for which the affection and attachment clause in section 9 of Human Organ Transplantation Act has to be elaborated properly, it has to set guidelines for the Authorisation Committee to know what is affection and attachment and what not and then to give approval, also Authorisation Committee in this regard should have certain powers to inquire as in if the donor got any payment as consideration for donating his organ to the recipient. But a question has to be considered as why would donor who is not a near relative would donate his organ if he is not getting any consideration, even when a surrogate mother when she lends her womb she is being compensated, when a person is donating a vital organ to another person he is not getting anything in return, the recipient on the other hand receives a second chance to live and as the expenses and cost of the procedure is high, due to which hospitals and the personnel in the hospital are also being benefited and when hospital is getting that much revenue it pays taxes to the country's Government by which even Government is also being benefited, but not the donor. For which, the donor has to get certain compensation be it money or insurance or in any other form by the hospital or the government or both.

As we have discussed above, many deaths have been taking place but the organs of such deceased bodies are not being utilised because of lack of awareness, families of such bodies tend to not allow transplantation of organs from such deceased bodies. Awareness by large scale campaigns have to take place by the governments, hospitals and Non-Government

³⁸ Id

organizations. They should teach the benefits of organ donation to the people; they should promote through social media and celebrity endorsements as people are mostly connected to them.

Also as we have discussed above a national organization has to be set up where its work should be decentralized through states so that this organization can have waiting list of patients and lists of organs available at different states in the country and this so called body should be independent to an extent from government so that corruption does not take place and people who deserve such organs get and not that of rich people and foreign nationals.

Transplant Coordinator has an important role according to the provisions of the Human Organ Transplantation Act, and every hospital has not much but only one or two transplant coordinators, the role being important which is he should coordinate with doctor in intensive Care Unit and approach families of such deceased who had brain death and make them aware as to how the organ of deceased can save one more life, and these transplant coordinators should have an eligibility criteria as to they should be educated, and they should be increased in hospitals .

Not every hospital has infrastructure nor some of hospitals who are registered to conduct procedures such as retrieval and transplantation has infrastructure to facilitate such process, and not all people can afford for such process at private hospitals as they are costly, so government has to take necessary steps in promoting such process in public hospitals too so that every class of persons can utilise this transplantation of organs, and hospitals which are not certified to conduct such process should be allowed to retrieve organs at least so that organs do not go wasted.

Bringing awareness in the system too such as police, about the provisions of the act and so that they will not lodge any complaint regarding not getting of any payment for donating organ as that is illegal and so that they can arrest such person. Also, penalty has to be raised to an extent so that people who conduct such activities get scared to do such things but if facts are as such to prove innocence, then no fine.

States have to adopt certain features from success stories of other states like Tamil Nadu, Maharashtra and Gujarat. The thing is the law has to be clear and so perfect as to no other possible way could be seen; the Act has to be modified to that level as interpretation by the intermediaries is not going in the direction of the objective of the Act.
