

OTHER RECOMMENDATIONS

27. It is the need of hour that a separate public health program for creating awareness and generating encouragement for organ donations should be launched through mass-media.

28. The Committee is also of the view that the best way to regulate the activity of human organ transplantation is to ensure that the same is required in the least number of cases. Towards this objective, significant results can be achieved if preventing chronic renal failures is taken up as an important objective of National non communicable disease program and strategies. It will lead to decrease in the cases requiring kidney transplantation.

29. The Committee is also of the view which is in conformity of the general policy of the Government of India that alleviation of poverty and ignorance and dissemination of education is key to control commercialization of human organs. Poverty and ignorance are the root cause of trade in human organs and, therefore, in the long run, this evil can be cured and controlled only by improving the general living conditions of the common man of the country.

30. Religious leaders should also be approached and requested for their help in disseminating their help in cadaver organ donation, keeping in view that at times these issues are related to religious restrictions and prohibitions by a large number of ill-informed individuals, who avoid or oppose human organ donation on religious grounds or other general or superstitious misgivings/misbelieves.

31. While applying the penal provisions to curb commercial dealings and other unfair or unethical practices in the activity of human organ transplantation, it must not be lost sight of that all the three parties, the donor, the recipient and the medical practitioner are delicately placed. The recipient is struggling for his survival. The donor has rendered himself vulnerable to physical complications by contributing to a socio-human cause. The medical practitioner has, by use of his super specialty skills made it possible for the recipient to extend/improve his life and for the donor to enjoy the bliss of his human virtue i.e. of a giver/provider. Transparency in the system while approving the donors for transplantations need be ensured so that dignity of all concerned is upheld at all times.

32. It is therefore strongly recommended that the Central/State Government must ensure that the penal provisions of THOA Act must be enforced strictly in accordance with the scheme of this special Act. Additionally Central Government may also take up the exercise of framing rules to regulate the procedure for taking cognizance of offence and conducting investigation as per sections 13 and 22 of THOA Act under the rule making powers conferred under Section 24 (o) of the THOA Act. Experience shows that in most of the cases where complaints are made, alleging commercial dealing in organ donation, police investigations cannot lead to any conclusive proof of commercial transaction. At best, the police may be able to gather evidence with regard to impersonation, false documentation or wrong affidavits. But evidence of the

allegation that money has exchanged hands is extremely difficult to be collected. The factors like impersonation, forgery or swearing false affidavits are already covered as punishable offences under the Indian Penal Code. Section 19 of THOA Act, except for defining the nature of activities requiring prosecution has no other substantial role to play. Accordingly, it is recommended that the Central Government may review Section 19 of THOA Act. It is also suggested that the THOA Act and rules may be amended to introduce an element of presumption in cases where there has been impersonation and falsification of documents to establish relationship between donor and recipient when none exists. This can at least make law justiciable (effective).

33. The Committee also takes note of the recent judgement of the Hon'ble Supreme Court of India, where the "authorisation committee" of Punjab was directed to examine the donor and the recipient, while the transplantation was to be carried out at Chennai. While an endeavour has been made to recommend the enhanced jurisdiction of the authorisation committees as envisaged in the judgement of Hon'ble Supreme Court of India, yet it is felt that several aspects peculiar to the attending ground realities were not brought to the notice of the Hon'ble Apex Court. For instance what happens if the donor and the recipient hail from different states; what happens if one of them or both hails/hail from a state/states where there is/are no "authorisation committee" and lastly it is not clear as to whether the "authorisation committee" of the state where transplantation is taking place, shall retain some jurisdiction or will be completely without jurisdiction and if latter is the case then how will the medical evidence if required to be assessed, will be assessed by the domicile "authorisation committee" without resulting in delays and without compromising the other laudable objectives of the THOA Act.

34. It is therefore recommended that the Central Government must approach the Hon'ble Supreme Court to seek appropriate clarifications.

The Report of the THOA review committee is submitted accordingly. The document referred to, in the report are enclosed as annexures as per the list of annexures.