

# THO Suggestion

## Suggestions & Recommendations for Transplantation of Human Organ Act (Amendments) Bill, 2009

MOHAN Foundation has sent the below mentioned suggestions and recommendations to Standing committee on Health of Rajya Sabha on 7th of March 2010. If you agree with some or all of these please send in your recommendations too to the members so that the current THO act can help provide momentum to the deceased donation programme in India.

[View Health Committee Members](#)

### I. De-linking authorized Transplant Hospitals and Organ Retrieving Hospitals for organ retrieval

**Reason for recommendation** – Brain death can happen in any hospital in the country - authorized by Appropriate authority or non-authorized hospital. Restricting organ donation only in registered hospital restricts the scope of the donation process. This de-linking of hospitals would help with the following –

- a. Stop moving bodies from unregistered hospitals to registered hospitals – this is very traumatic to relatives and they often withdraw consent when they are told of this requirement.
- b. Moving body from smaller towns to a bigger town with authorized centres This has often happened in Tamil Nadu and Gujarat where bodies have been moved from Surat to Ahemdabad and from Salem and Erode to Chennai – almost a distance of 300 kms. After donation the body is again taken back for cremation to the home town.

At present Tamil Nadu government has made such a provision vide GO no. G.O.(Ms.) No. 289 Dated: 5.9.2008 (Health and Family Welfare Department - Non-Transplant centers - Criteria for non-transplant centers to retrieve organs from brain dead persons).

The current amendments includes a Mandatory clause - where in event of brain death in the ICU -it is mandatory for doctors to ask for organs – in such an event in a non- licensed centre where a doctors makes such request, it is important that in such a hospital surgery for retrieval of organs should be possible.

### II. Defining further the term ‘Lawful possession of Body’

The THO Act recognizes a person in ‘lawful possession of the body’ as the authority to give consent for organ donation of the deceased. The term “lawful possession” is ambiguous as the Act fails to explain the term and also the people who can be considered as the ones who are in lawful possession of the body. Therefore it becomes important to incorporate a list of qualified relatives as mentioned in the transplant act from USA & UK (UAGA and HT Act), who are the persons who have the authority to give the consent. This list should be in the prioritizing order of family members, where, if the member who is on the top of the list is not present, the decision

can be taken by the member next to him in the list. This will save time when dealing with the unstable deceased donor. It would also give legal authority to a relative who may not be father or mother at the time when consent is requested.

1. Spouse or partner, including civil partner
2. Parent or child
3. Brother or sister
4. Grand parent or grand child
5. Niece or nephew
6. Step father or step mother

Definition of next to kin also is ambiguous in certain situation and can be similarly defined

### **III. Rules related to Post- mortem and organ donation- Requires procedural simplification – Current THO states –**

#### **Reason for recommendation –**

1. Solid organ for transplants cannot be removed in the mortuary, whereas post-mortem should be possible in operation room.
2. A retrieval and post-mortem means cutting the body up twice and stitching it back twice sometimes in the same hospital premises. This is totally meaningless and causes undue delays in handing back the body to the relatives
3. In road traffic accidents the cause of death is well known from the investigations done, moreover many are explored for brain –hemorrhage, hence cause of death is well established, so requirement for further post-mortem questionable.

**In our experience with over 400 donations over the last 10 years the current provision** makes organ retrieval surgery on the discretion of the police officials and forensic doctor. In most situations they do not understand the complexity of the situation and organ preservation. Moreover the cause of brain death in our country are maximum from fatal road traffic accidents that number 140,000 per year. Of these 67% have brain death as per a study from AIIMS.

### **IV. Switching off the Ventilator after declaring brain death –**

At present brain death declaration is being only made for organ donation purposes. In many instances when a request is made for organ donation and when relatives refuse for donation they usually do not want the ventilator to be switched off and wish the continuation of the vegetative state.

**Reason for recommendation –**This puts strain on ICU resources especially in Govt. Hospitals as other needy patients are refused life saving treatment. The doctors also are on the defensive once they ask for organ donation, as the relatives feel that it is because the doctors have vested interest they have kept the ventilators going but because they have refused the request they want to get rid of the body by switching off the ventilators. .

## **V. Clarification of Clause for unclaimed body reads as follows-**

**Current Status** – “CHAPTER II AUTHORITY FOR THE REMOVAL OF HUMAN ORGANS  
-Authority for removal of human organs in case of unclaimed bodies in hospital or prison

1. In the case of a dead body lying in a hospital or prison and not claimed by any of the near relatives of the deceased person within forty eight hours from the time of the death of the concerned person, the authority for the removal of any human organ from the dead body which so remains unclaimed may be given in the prescribed form by the person in charge for the time being, of the management or control of the hospital or prison or by an employee, of such hospital or prison authorized in his behalf by the person in charge of the management or control thereof.
2. No authority shall be given under sub-section (1) if the person empowered to give such authority has reason to believe that any near relative of the deceased person is likely to claim the dead body even though such near relative has not come forward to claim the body of the deceased person within the time specified in sub-section”

### **Reason for recommendation –**

1. This whole clause has no meaning for organ donation unless such body that is left unclaimed in a hospital or a body from the prison is on a ventilator. In ordinary circumstances in 48 hrs the body would be decomposed and no organs can be utilized. In such situations presumed consent for eyes, heart valves, bones and cartilages should be passed.

## **VII. Sharing of organs and costs: Not much is mentioned on this in THO act**

**Reason for recommendation** –sharing between public and private hospitals. Most donations take place at present in Private hospitals. Sharing of organs can take place only if hospitals are allowed to share costs of maintaining brain death, costs of Intensive care and cost of operative procedures. This should be clearly spelled out in the procedures without any ambiguity.

## **VIII. Current Advisory Committee in draft recommendation - not representative of stake holders in the deceased donation programme- Should be enlarged –**

Objectives of Advisory committee should be able to assist the Appropriate authority and include -

- i. Establishing formats and procedures for recipient listing, organ allocation and transfer
- ii. Coordination between hospitals where donor / recipient are located
- iii. Proposing policy initiatives from time to time.
- iv. Need for watching the working of the cadaver organ transplantation program,

1. This Advisory committee should be headed by Chairman and meeting should be convened by Convener who should be nominated -

- i. Secretary, Health or his nominee - Chairman

- ii. DGHS or representative
- iii. Transplant team member x 5 - representing each organ with experience in deceased donation programme & one member from transplant Co-ordinators front
- iv. One senior police officer of DIG rank from Police welfare dept / Home Ministry
- v. Member representative from NGO x 2 that has experience and track record in the field
- vi. One transplant team member from four different hospitals in the country that has maximum experience in deceased donation programme or two from deceased and two from living donation programme.

The Advisory committee shall in turn nominate four sub-committees to assist in its functioning for

- i. Liver
- ii. heart
- iii. kidney
- iv. other organs- to determine the severity of illness for listing a patient for transplant.