

All about Transplantation of Human Organs Act, 1994

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Introduction

The Transplantation of Human Organ Act (THOA), 1994, was enacted on February 4, 1995, in the states of Goa, Himachal Pradesh, and Maharashtra and all the union territories. Thereafter, all states adopted these regulations, with the exception of the states of Jammu and Kashmir and Andhra Pradesh, which they had enacted their own legislation. THOA relates to the regulation, storage, and transplantation of human organs for therapeutic purposes and prevention of commercial dealings of human organs.

This Act provide guidelines and rules regarding who can give or donate the organs as well as who can receive the organ and how should the organ donation should take place. This Act for the first time in India recognized the brain stem death under some guidelines. There has been various amendments so far last being amendment in THOA (Amendment Bill 2011). Apart from this Transplantation of Human Organs and Tissues Rules, 2014 also came in the year 2014.

Q1. What is the objective of The Transplantation of Human Organs Act, 1994?

Ans. The Act main aim of THOA, 1994 is to provide for the guidelines and regulation of storage, removal, and transplantation of human organs strictly for therapeutic purpose. And for the prevention of commercial dealings in human organs and for matters connected therewith or incidental thereto. Apart from this another aim is to accept brain death and making it possible to use these patients as potential organ donors.

Q2. Whether this Act applicable to all over India?

Ans. Presently The Transplantation of Human Organs Act, 1994, is applicable to all over India except state of Jammu & Kashmir as the matters related to health is governed by each state in India and this act has not been implemented by the Government of J&K yet.

1) What is organ donation?

Organ donation is basically giving or gifting organ in order to help someone who needs organ transplant to be operated, it could be near relative or any other person. THOA strictly prohibits commercial dealing in organs of any sort.

Q3. What are the different types of organs which can be donated?

Ans. Generally in case of organs: heart, kidneys, liver, lungs, intestine, pancreas and tissues being, skin, bones, blood vessels, heart valves, corona, ear drums can be donated for the therapeutic purpose.

Q4. Who all can be an organ donor?

Ans. Under the virtue of Section 3 of THOA, 1994, Donor would fall under the following two categories;

Living Donor : any person not less than 18 years of age, who voluntarily authorizes the removal of any of his organ and/or tissue, during his or her lifetime solely for therapeutic purposes.

Deceased Donor : Anyone, regardless of age, race or gender can become a donor of any organ and/or tissue after his/her death (Brainstem/Cardiac). A person who is in lawful possession of the dead body or the free consent of 'near relative [Section 2(i)]' is required for the said purpose. If the deceased donor is under the age of 18 years, then the consent required from one of the parent or any near relative authorized by the parents is necessary.

Q5. Who all can donate organ to the patient who needs organ transplantation?

Ans. a) Under section 2(i) of THOA, 1994, 'near-relative' means spouse, children, grandchildren, brother-sister, parents and grandparents of the patient can donate the organ after taking prior permission from the doctor in-charge of the transplant center to donate his organ.

b) A non-related donor needs prior permission of Authorization Committee established by the state under the Act in order to donate his organs.

Q6. What is brain stem death and Is brain death legal death?

Ans. Section 2(d) of THOA, 1994 defines brain stem death, it says the stage at which all functions of the brain stem have permanently and irreversibly ceased is brain stem death but it is subject to certification. With this act been passed brain death has been legalized in India however it needs to be certified by the Board of medical experts mentioned under Section 3 Sub clause 6 of The Transplantation of Human Organs Act, 1994.

Q7. Is there any age limit for organ donation under this act?

Ans. Actually there is no specified limit but in case of living person the age of donor should not be less than 18 years, and in case of tissues, age usually does not matter and generally depends upon the physical structure of the body of person.

Q8. Whether the expenses regarding the removal of organ would have to be borne in by donor itself?

Ans. No, the cost of donor management, retrieval, transportation and preservation is to be borne by the recipient/ institution/ government/ NGO or society, and not by the donor's family.

Q9. Whether human organ could be used for commercial purposes?

Ans. No, one of the main objectives of The Transplantation of Human Organs Act, 1994 is the prevention of commercial dealings in the human organ. It is strictly prohibited under this Act. Any sort or any kind of commercial dealings in human organ would lead to punishment under this Act.

Q10. What is the punishment in case of commercial dealings in human organ?

Ans. Under Section 19 of The Transplantation of Human Organs Act, 1994, In case of commercial dealings of any kind in human organs, the punishment has been mentioned as under:

The person found doing so shall be punishable with imprisonment for a term, which shall not be less than 2 years but which may extend to 7 years and shall be liable to fine, which shall not be less than ten thousand rupees but may extend to twenty thousand rupees.

In case of offences by company under the virtue of Section 21 of The Transplantation of Human Organs Act, 1994:

Where any offence punishable under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.