

Illegal Kidney Transplants: Where lies the problem?

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The Transplant of Human Organs Act (THOA) 1994 was passed to prevent commercial dealings in organ donation. Under the Act, for living kidney donations, only near relatives may donate or unrelated individuals can donate for altruistic reasons without any commercial transaction. Recently, the police stopped a case of an illegal kidney transplant between unrelated recipient and donor shown as husband and wife respectively at a reputed city hospital. It was an alleged kidney racket where a man who was part of the gang reportedly leaked the information to a social worker. Over the days that followed, the police arrested various people involved in the case including the kidney recipient, the kidney donor from another state who had been falsely represented as the recipient's wife, son of the recipient who was shown as the brother of the donor, the kidney racket kingpin, hospital transplant co-ordinator and the middlemen and agents involved in the case. The charges were framed not only under the THOA act which condemns selling, buying and aiding in commercial transactions of human organs but also for forgery of documents to show the relationship as husband and wife.

As per the provisions of Act, the case was investigated by the doctors of the Health Committee formed by the state government. This Health committee scrutinised the case for over weeks taking statements from all the accused in the case, going over the documents and medical records. While all the accused in the case were arrested quickly, the doctors and hospital where the operation was taking place were not indicted in the case. It was only after three weeks of investigations that the transplant doctors, the chief executive and medical director of the hospital who were involved in approving the documents were arrested for being 'negligent' in the approval process. With the weight of big lawyers behind them, they were able to get bail and walk out of jail within a week. The final report of the investigating committee held them only negligent and absolved them from being part of the commercial deal in the transplant.

These are the facts in the case reported everyday in the media which focused on the doctors and hospital. But if we look beyond these facts, it reveals a more menacing reality of the kidney scams. The kidney rackets have continued to perpetuate despite the law in implementation. Statistics show high demand for kidney transplants and poor supply of organ donations. Even among organ donations occurring, those from deceased donors form a paltry number compared to living donors. Such situation becomes perfect breeding ground for a racket where middle agents help rich kidney recipients find poor donors as kidney sellers. But there are many others still undiscovered cases where donors have been duped into donating a kidney and been paid a pittance in return.

The law on Transplant of Human Organs holds culpable everyone involved including the kidney recipient, donor, any facilitator, doctors as well with severe punishments for both the kidney recipient and the donor. Many would argue that if in such a case, if someone is willingly ready to give their kidney and the recipient is ready to pay the price for it then what is wrong with such a deal? The major issue in commercial dealing of the human organs is the unequal relationship between the recipient and the donor. The recipient is usually a rich patient who can afford to pay lakhs of rupees for a kidney

transplant while the donor is poor, uneducated and in dire need of money to pay off debts. Clearly, a person ready to sell their own organ to someone, that too, for a measly few lakhs would surely have been in a difficult situation and driven to the end of the rope. Indeed, consenting to donate an organ while living is not easy and organ transplantation is not without risks. Whilst for the kidney recipient who is already extremely sick with poor quality of life, the risk of a transplant is worth giving a chance. But does the donor offering his/ her kidney for a price know that it is illegal or is he/ she even fully told about the risks and consequences of the transplant? Does the donor even get all the money promised in return?

The story of the kidney donor in this case is a typical one. Belonging to a small village, completed only few years of schooling, the poor woman is a middle aged mother of five children. The house in which she lives with her alcoholic husband, father-in-law and children is nothing but a single room with no facilities obtained under a government scheme. Struggling to feed a large family with no source of income, not even from the husband, she would do odd domestic work and seasonal jobs. Consequently, money had to be borrowed now and then. The irregular work only sufficed to feed the family much less to pay off the debt. This desperate situation brought her to ask help from a neighbor who introduced her to an agent. The agent promised to find work for her. But this offer gradually turned towards convincing the woman to donate a kidney for money and saving someone's life. This benevolent act would also give her a chance to pay off the debt once and for all. Thus, the agent convinced the woman to sell her kidney for 1 or 2 lakhs and was assured that her health would not suffer. Of course she would be paid only after the transplant was completed and she was back at home. Having informed the family that she was going outstation for work, she came to the city with the agent.

During the preparation for transplant, she was scared at one point and had refused to undergo the operation. She was told that too much money had been spent and she could not refuse the donation. On the day of the transplant operation, the police barged into city hospital and stopped the operation just as the donor was given an incision to remove the kidney. The hospital washed its hands off the case and discharged the woman even before she could recover from the operative wound. Caught in the clutches of the law, she moved from the hospital to the police station to magistrate court and finally landed in jail. Meanwhile, her family only came to know about it when the police informed them. Without any relatives in the city and having borrowed some money, her daughter could only visit her for a short time in jail. Considered as a non-bailable offense, the bail conditions imposed to get out of jail custody were just the same for all the accused. But the weight of the law falls unequally on the rich and the poor. Hailing from a poor household in the neighbouring state, neither did she have bail money nor a guarantor to stand in court for her. Thus, she continued to languish in jail recovering from her operative wound while the other accused were able to get out by meeting the bail conditions. Her 5-week ordeal in jail only ended when some NGOs intervened to help her get out of jail.

On the other hand, since the arrest of the doctors, the medical community had been in an uproar. Supporting the doctors, the medical profession had opposed the provisions of the law in same vein as they have all other regulations. In their protest, first the nephrologists and urologists had threatened to stop the transplants and later the Transplant Authorisation Committee members refused to attend the meetings for transplant approvals. Many members wrote letters to say that they do not want to be next

victim like the officials of the implicated hospital. The protest had adversely affected the patients waiting for transplant surgeries.

But the THOA law is clear in the matter. The role of hospital and medical profession is well defined in verifying the true relationship, protecting the interests of donor and informing them about risks involved. These responsibilities resonate very well with the principals of medical ethics that doctors take oath to follow when joining the profession. The Act has laid down thorough procedures for human organ transplants and especially in case of living donors. Hospitals authorised under the Act to conduct transplants must also constitute a Transplant Authorisation Committee which approves the transplants. The Committee members should include an administrative head, two medical experts not part of the transplant team, a member nominated by the government and members from civil society. A doctor and administration of the hospital processes the documents for approval of transplantation and sends them to the Committee. The role of the Committee in approval of transplant is to ensure that there is no commercial transaction, understand reasons for donation, in case of near relatives – they have to verify the established relationship by examining photographs and documents, etc. The rigorous scrutiny procedure laid out includes videographed interviews. The law further emphasises on special precautions to be taken in case of a woman donor to verify ‘her identity and independent consent’.

With this structure of exhaustive approval process, there is much left to be desired when it comes to implementation of the law. There is obvious lack of proper scrutiny by the hospitals. The doctors and the authorisation committee could have easily spotted the fake documents and the fake relationship in the case if the process had been properly adhered to. The transplant team’s assertions that they did not even know the donor or recipient and were only part of the transplant operation shows the lack of concern towards ensuring that as a patient, the donor has been explained about the possible side-effects, complications and hazards. As doctors deeply involved in patient care and well-being, is it ethical that they are only concerned with the operation and not the people being operated upon? Also, their stance is that they are not capable of verifying documents and it should be the responsibility of the police. The task of verifying documents is only one component of the approval process which provides many procedural safeguards including a videographed interview. The procedure simply involves understanding the entire story of the donor and recipients relationship through various ways. Involving the police is impractical and will only delay the transplant approval process. By insisting on removing the role of doctors in verifying the documents, approving transplants and ensuring protection of the donor, they want to conveniently evade the law as well as their ethical responsibilities.

The THOA was framed to curb the commercial dealings in human organs which are inherently exploitative in nature. By terming everyone involved as accused in the case, the law does not really address the exploitative nature of this transaction. It does not take into account the socio-economic reality that leads many to part with their organs. Nor does it consider the lack of agency of the donor who is caught in difficult circumstances. And given the obvious power imbalance between the donor and other parties, does criminalising the donor really prevent commercial dealings in human organs? Moreover, lack of access to resources makes them defenseless in the face of the law. All the while, the real culprits, who maintain this chain of illegal but lucrative transplants, are able to extricate themselves easily.