

KARNATAKA KIDNEYS TRANSPLANTATION ACT, 1986

45 of 1986

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An Act to provide for use of kidneys of deceased persons and for donation of kidneys for therapeutic purposes. Whereas, it is expedient to provide for use of kidneys of deceased persons and for donation of kidneys for therapeutic purposes and to provide for matters connected therewith. Be it enacted by the Karnataka State Legislature in the Thirty-seventh Year of the Republic of India as follows.

1. Short title and commencement :-

(1) This Act may be called the Karnataka Kidneys Transplantation Act, 1986.

(2) It shall come into force at once in the Corporation of the City of Bangalore and in the remaining area or areas in the State on such date as the State Government may by notification, appoint and

different dates may be appointed for different areas.

2. Definitions :-

In this Act, unless the context otherwise requires.

(a) "Approved institution" means a hospital or a medical education institution for therapeutic purposes approved by order by the State Government for the purpose of this Act;

(b) "Near relative" means any of the following relatives of the deceased, namely, wife, husband, father, mother, son, daughter, brother or sister;

(c) "Registered medical practitioner" means a practitioner practicing any system of medicine and registered as a medical practitioner under any law for the time being in force in India.

3. Removal of kidneys of deceased person for therapeutic purposes :-

(1) If any person either in writing or orally in the presence of at least one witness during the last illness has expressed request that his kidneys be used for therapeutic purposes after his death, the person lawfully in possession of his body after his death shall, unless he has reason to believe that such request was subsequently withdrawn, authorise the removal of the kidneys from the body for the said purposes.

(2) Notwithstanding anything contained in sub-section (1), any person lawfully in possession of body of a deceased person may authorise the removal of the kidneys from the body for the purposes aforesaid, unless that person has reason to believe.

(a) that the deceased has expressed an objection to his kidneys being so dealt with after his death, and had not withdrawn such objection; or

(b) that a near relative of the deceased objects to the kidneys of the deceased being so dealt with before such person authorises the removal of the kidneys.

(3) An authority given under the provisions of this section in respect of any deceased person shall be sufficient to warrant the removal of the kidneys from the body and the use for the purposes aforesaid, but no such removal shall be effected except by a registered medical practitioner working in an approved institution,

or by a registered medical practitioner (being a person possessing qualifications in surgery recognised under any law for the time being in force) approved in writing by the State or by any officer authorised by it in this behalf, who has satisfied himself by a personal examination of the body that life is extinct.

4. Time for removal of kidneys :-

(1) Notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the person empowered to give authority for the removal of the kidneys under Section 3 to authorise removal of the kidneys from the body of deceased person within one hour after such person has been declared dead by any registered medical practitioner.

(2) The date and time of death shall be certified by the registered medical practitioner, who attends the donor at his death or where there is no such practitioner by any other registered medical practitioner who is called upon to do so, but any such practitioner so certifying shall not participate in the procedures for removing or transplanting the kidneys.

5. Doubts in respect of inquest or post-mortem, to be referred to the prescribed officer :-

(1) If the person lawfully in possession of the body of a deceased person has reason to believe that an inquest or a post-mortem examination may be required to be held in accordance with the provisions of any law for the time being in force, the authority for the removal of the kidneys shall not be given, except with the consent of the prescribed officer or any other officer, as the State Government may, by notification, appoint in this behalf.

(2) The officers referred to in sub-section (1), may give direction, either before or immediately after the death of a person, that his consent to the removal of the kidneys from the body of the person after the death of the person is not required.

(3) A consent or direction of the officer referred to in sub-section (1), may be given, subject to such condition as are specified in such consent or direction. Such consent or direction may be given orally by the officer referred to in sub-section (1), but shall be confirmed in writing by him within forty-eight hours from the time the consent or direction is given orally.

6. No authority for removal of kidneys, when body is entrusted to person only for cremation, etc :-

No authority for removal of kidneys shall be given under Section 3 in respect of the body of a deceased person except by the person authorised to do so under this Act, by a person entrusted by another person with the body of the deceased person for the purpose only of internment or cremation.

7. Authority for removal of kidneys from unclaimed body :-

In the case of a body unclaimed or likely to remain unclaimed in an approved institution, any authority for removal of kidneys under this Act may be given on behalf of the person having the control or management of the approved institution by any officer or person designated in that behalf by the first mentioned person.

8. Protection of action taken under the Act in good faith :-

No suit, prosecution or other legal proceedings shall lie against an approved institution or a person lawfully in possession of the body of a deceased person or any officer of an approved institution or of the Government or a local authority or any registered medical practitioner in discharging any functions under this Act or anything which is in good faith done or intended to be done, in pursuance of this Act or the rules made thereunder.

9. Saving :-

(1) Nothing in the foregoing provisions of this Act shall be construed as rendering unlawful dealing with the kidneys of a deceased person, which would have been lawful if this Act had not been passed.

(2) Any authority for the removal of kidneys given in accordance with the provisions of this Act shall not be deemed to be in contravention of the provisions of Section 297 of the Indian Penal Code.

10. Power to make rules :-

(1) The State Government may, by notification, and after previous publication make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following matters, namely.

(a) the form and the manner in which the person lawfully in

possession of the body of deceased person may authorise the removal of kidneys for therapeutic purposes;

(b) the form and the manner in which a near relative of a deceased person may object to the deceased persons kidneys being used for therapeutic purposes;

(c) the form and the manner in which any authority for removal of kidneys under this Act may be given on behalf of the person having the control or management of an approved institution by any officer or person designated in that behalf by the person having the control or management of the approved institutions;

(d) the manner in which the prescribed officer may give his consent for the removal of kidneys from the body of a deceased person;

(e) any other matter which is to be, or may be, prescribed by rules under this Act.

(3) Every rule made under the section shall be laid, as soon as may be, after it is made, before each house of the State Legislature while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both houses agree in making any modification in the rule, or both houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall, from the date of publication of such notification, have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

11. Repeal and savings :-

(1) The Karnataka Kidneys Transplantation Ordinance, 1986 (Karnataka Ordinance 4 of 1986) is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.