

MAHARASHTRA KIDNEY TRANSPLANTATION ACT, 1982

12 of 1983

[24th February, 1983]

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An Act to make provisions for use of kidneys of deceased persons, and for donation of kidneys, for therapeutic purposes. WHEREAS it is expedient to make provisions for use of kidneys of deceased persons, and for donation of kidneys, for therapeutic purposes and to provide for matters connected therewith; It is hereby enacted in the Thirty- third Year of the Republic of India as follows :-

1. Short title, extent and commencement :-

- (1) This Act may be called the Maharashtra Kidney Transplantation Act, 1982.
- (2) It extends to the whole of the State of Maharashtra.
- (3) It shall come into force

(a) in Greater Bombay, at once; and

(b) in the remaining area or areas in the State, on such date as the State Government may by notification in the Official Gazette, 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 or teaching institution for the therapeutic purposes approved by the State Government for the purposes of this Act;

(b) "near relative" means any of the following relatives of the deceased, namely, a wife, husband, father, mother, son. daughter, brother or sister, and shall not include any other person;

(c) "registered medical practitioner" means a practitioner practicing any system of medicine and recognised as a registered 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 at any time during his lifetime, or orally in the presence of two or more witnesses during his last illness, has expressed a 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in possession of his body after his death shall, unless he has reason to believe that the request was subsequently withdrawn, authorise the removal of the kidneys from the body for these purposes.

(2) Notwithstanding anything contained in sub-section (1), any person lawfully in possession of the 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 had 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 authorised the removal of the kidneys.

(3) An authority given under the provisions of this section in respect of any deceased person shall be sufficient warrant for the

removal of the kidneys from the body and their 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 Government 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. Authority for removal of kidneys within one hour after death :-

(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 the 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 procedure for removing or transplanting the kidneys.

5. Doubts in respect of inquest or post-mortem, to be referred to Coroner or officer performing similar functions as Coroner :-

(1) If a 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 Coroner or any other officer performing similar functions as the Coroner under any other law for the time being in force.

(2) The Coroner or such other officer 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 body of the persons after the death of the person is not required.

(3) A consent or direction of the Coroner or such other officer may be given, subject to such conditions as are specified in such consent or direction. Such consent or direction may be given orally by the Coroner or such other officer, but shall be confirmed in writing by him within forty-eight hours from the time, 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 the removal of the kidneys shall be given under Section 3 in respect of the body of the deceased person by a person entrusted by another person with the body of the deceased person for the purpose only of its interment or cremation.

7. Authority to remove kidneys, when body is lying unclaimed in approved institution :-

In the case of a body lying unclaimed or likely to remain unclaimed in an approved institution, any authority for removal of the 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. 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 the 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.

8A. Offences and penalties :-

Any person who,

(a) authorises or causes another person to authorise the removal of a kidney or kidneys;

(b) removes or causes another person to remove a kidney or kidneys;

(c) transplants or causes another person to transplant a kidney or kidneys removed; in contravention of the provisions of this Act, shall, on conviction, be liable to be punished with imprisonment for

a term which may extend to three years or with fine which may extend to rupees five thousand or with both.

9. Prelection of persons acting under the Act in good faith :-

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

10. Rules :-

(1) The State Government may, by notification in the Official Gazette, and subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for,

(a) the form and the manner in which the person lawfully in possession of the body of the deceased person may authorise the removal of the kidneys for therapeutic purposes;

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

(c) the form and the manner in which any authority for removal of the 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 institution;

(d) the manner in which the Coroner or any other person performing the functions of the Coroner may give his consent for the removal of the kidneys from the body of the deceased person;

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

(3) Every rule made under this 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.