

EDITORIAL

The kidney trade again

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In our scandal-prone Indian public life, one scandal distinguishes itself by the amazing regularity with which it hits the headlines every few years. The only variation is its shift from one city to another as if in planned rotation. Thanks to the desperation, ingenuity and collusion of the players involved, the Indian kidney bazaar, as it was crudely described at some stage in its history, refuses to die down. The latest exposé comes from Mumbai, where a leading doctor from a reputed hospital was arrested for his involvement in a well-organised racket (1).

If ever there is a count of which subject has featured most often in the pages of this journal, transplantation ethics will be a strong contender for the top spot. From gory descriptions of organised rackets in the 'From the press' section to philosophical debates on individuals' right to sell a part of their body, this Journal has covered the spectrum of the debate. Most readers are thus familiar (and may be bored) with the classic ingredients of this plot when it is exposed every few years—desperate (and often rich) patients dying of kidney failure, organised gangs of middlemen luring poor and gullible individuals from the deprived sections of society, and 'reputed' and 'successful' doctors and institutions involved in the transplants feigning ignorance and innocence when raided and arrested. They may be justified in asking: 'What's new about yet another kidney racket exposed in Mumbai? Why have another editorial on that?'

The law

The Transplantation of Human Organs Act was passed by the Indian Parliament in 1995. The act legalises 'brain death', permitting removal of organs from brain-dead cadavers after obtaining the appropriate consent. It also regulates non-related live donation of organs and makes commercial trading an offence. Institutions conducting transplants must register with a state government-appointed authorisation committee which is supposed to enforce standards, investigate complaints and inspect the hospitals regularly to monitor quality. The Act allows for donation from a non-related person as long as the donor's intentions are scrutinised by the authorisation committee to make sure that no commerce is involved.

For some time following the passage of the Act, commercial trading either decreased or went underground. However, in the past few years, the buying and selling of organs is back in a new *avatar*. The unrelated 'donor' (read poor person picked by a middleman) and the recipient (read rich man in need of a kidney) now file affidavits with the state authorisation committee stating that they are emotionally related and ask for the transplant to be allowed under the clause of 'altruistic donation'. Figures show that nine out of ten times the permission is granted (2). For the members of the authorisation committees this is an act of altruistic donation to be allowed by a clause in the law. Thus, what was once considered unethical and illegal now has the official sanction of the state. A leading newsmagazine has documented how the authorisation committees in some states have colluded in the game of 'unrelated donation'. This is the new twist in the transplant racket tale.

Over the years, the media, health activists and the ethics movement have attempted to expose the organ trade. The passage of the Act itself was partly a response to calls from the media and activists to stop the trade in organs and it was expected to curb the practice. Demands that the medical councils take *suo moto* action have been ignored. Medical associations have also called upon their members to uphold ethical values and not participate in such actions.

Need new ways out

With the complete failure of the law on the one hand, and the profession's sense of ethics on the other, different strategies are needed if the situation has to change. Some steps are relatively easy. There could be a tightening of the clause that allows unrelated transplantation. There is also a need for including members of NGOs and public organisations in the authorisation committees, and greater transparency in their working. Mechanisms of granting exemplary punishment to, and professional isolation of, those found guilty need to be created. In the past, most players, especially medical professionals, have gone scot-free and have been rehabilitated in the profession. Promotion of cadaver transplantation is also needed, but this by itself cannot fulfil the need for organs. In any case, buying organs would still be an easier way out for those who have the resources. Given the potent mixture of the desperation of patients, willing collusion of medical professionals, availability of helpless individuals from deprived sections and a complete failure of monitoring agencies, many of these new strategies are also unlikely to easily succeed.

It is pertinent to note the medical profession's deafening silence to the exposés. That brings us to what I believe is a crucial issue that has escaped attention in the past. For a long time, we have argued that the silence of the profession is just a reflection of their overall lack of interest in such issues. However, now it seems to me, after many discussions and interactions with colleagues, that a significant part of the profession, especially those involved with transplantation, do not see anything fundamentally wrong in the activity of unrelated transplantation. The thought of poor and helpless people being picked up from the streets to provide organs to the rich is not necessarily revolting to them. For them either the ends justify the means or the means do not matter. And this is crucial to the whole issue. For, if the most important players in transplantation are themselves not convinced that the practice of medicine in general and transplantation in particular has to respect a certain social ethic, all laws can be circumvented and this in turn can be rationalised.

Medicine in the market economy

This philosophy is also a product of the growing ethos of 'marketisation' and privatisation of medicine in India, where the money you make matters more than how you make it. With the ideological swing towards a market economy, 'marketised' medicine has acquired a certain respectability. More important, it now has the tacit support of the state. Most of the organ trade takes place in the private sector and with the cooperation of authorisation committees. In some cities including Mumbai, this has coincided with the collapse of specialty departments in public hospitals, which in the past were active in transplantation. In a related development, a section of the transplant community has actually argued in leading medical journals (3) that since in society we now buy and sell everything, why should we ban the buying and selling of organs? Such an argument being made in public and its acceptance by leading medical journals is a reflection of the permissiveness of the new economic climate.

Like the movement against sex-selective abortions, the battle against this practice must be fought at two levels. The first is in the realm of the law and monitoring agencies. The second is an ideological battle against what is essentially a violation of human rights and a form of social exploitation of the worst kind. This battle can only be fought by a coalition of political and people's health movements, including a section of the medical profession which acknowledges both these levels. Given the retreat of ideology both in politics and in the profession this is likely to be a difficult task, but there seems to be no other choice. Otherwise, we will suffer the same cycle of rackets being exposed periodically. And perhaps yet another edit like this in a few years.

References

1. Mudur G. Kidney trade arrest exposes loopholes in India's transplant laws. *BMJ* 2004;**328**:246. <http://bmj.bmjournals.com/cgi/content/full/328/7434/246-c>
2. Menon P. Ways of the Authorisation Committee. *Frontline* 2002;**19**. <http://www.flonnet.com/f11907/19070700.htm>
3. Radcliffe-Richards I, Darr AS, Guttman RD, *et al*. The case for allowing kidney sales. *Lancet* 1998;**351**:1950–52.