

EDITORIAL

Asia's organ farms

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Recent press reports of kidneys being bought and sold in Tamil Nadu (1) only brought to general notice what many doctors and nearly all patients with kidney failure already know: one can buy a kidney in Tamil Nadu or, for that matter, in many parts of this subcontinent. While the kidney trade has been written about ad nauseum over the last 15 years, recent developments necessitate a review of the issue. Lessons from the ineffective Indian law against organ sale, and reports from Iran which has a regulated system of compensating for donations, could benefit those in Pakistan who are moving to enact a law on organ transplant, so that the law will ensure ethical practice.

The development of renal transplant as treatment for end stage renal disease was a landmark. However, transplant patients must be on immunosuppressive therapy for life. This means that renal transplant is an option only for the well-off and only financially secure patients will seek a kidney. It is also obvious that only the financially desperate will seek to sell a part of themselves.

The Transplantation of Human Organs Act (THOA), 1994 (2), was supposed to promote cadaveric organ transplantation in India. This has not happened for many reasons: the inclusion of loopholes either by design or default permitting the continued sale of kidneys (the proviso that a person not related to the patient could donate a kidney by reason of "affection" and the inclusion of the spouse as "near relative" so that people can marry for organ "donation"); the availability of enough poor people ready to sell a part of themselves; a social ethos which permits justification of the trade as "good for both – the seller and buyer"; a medical establishment willing to participate and, perhaps most importantly, a near absence of commitment on the part of Indian society to promote cadaver organ transplant.

The THOA mandated an authorisation committee to ensure that non-related "donors" donated out of affection. This fig leaf of respectability given to the loophole permitting unrelated "donations" was removed when it became clear that the authorisation committees were packed with government representatives, and they had no infrastructure to enable them to verify the averments of the "donor". The authorisation committees, therefore, only gave a cloak of legality to the continued sale of kidneys by the financially desperate.

A number of changes are needed in law and practice before the original goal of promoting a cadaveric transplant programme can be reached (3).

Is it okay to sell a kidney?

It is worrisome that some in the medical profession argue that regulated organ sale provides subsistence to those who have nothing to sell but their body parts. A follow-up of paid "donors" (4) found that most were financially worse off and their health had worsened as well.

The common social ethos in this part of the world, based on caste, class and other distinctions, still is that some people are less equal than others. Thus many doctors feel no compunction in being part of the racket. As long as they are not directly implicated they will perform live donor organ transplants, with no questions asked. Investigations, reported widely in the press, have also documented the active involvement of doctors and hospitals in the trade.

Can cadaver donation develop alongside paid donation?

Activists who worked for the enactment of the THOA did so in the hope that the law would make organ harvesting from cadavers possible (5). These hopes have been belied. Very few organs have been harvested from the brain dead. It has been pointed out that in a privatised medical system the diffusion of specific medical technologies may be influenced by their scope for making quick profits (6). The dynamics of a privatised medical system – which includes medical tourism, actively encouraged by the government – will encourage live rather than cadaveric donation.

The transplant industry in Pakistan

If doctors and hospitals in India defy the law against organ trade, in the absence of any legislation on organ and tissue transplant

Pakistan has a booming transplant industry (7) which has grown after the Indian law was passed. In 1991, 75 per cent of kidney transplants in Pakistan were from live, related donors. While accurate figures are not available, that proportion is believed to have been reversed today. Over half of these are believed to be on foreigners; the organ transplant industry depends on medical tourism. According to drug company representatives, at least seven transplants take place every day in Lahore, and five in Rawalpindi, mostly on foreign patients. A minimum of 4,000 kidney transplants take place in the country every year. Hospital websites used to carry details of the total cost of the kidney transplant package, but these have recently been removed, apparently in anticipation of a legislative ban.

Cadaver donation in Pakistan

India's THOA permits the removal of organs from a person certified brain dead, after obtaining consent from the next of kin. In Pakistan there is a lack of consensus among Islamic scholars on cadaveric donation. Though Saudi Arabia and Iran permit cadaver donations, there is no law in Pakistan specifically permitting cadaver donation, and there have been only two cadaver donations in the country to date. In the absence of a definition of brain death, taking organs from heart-beating but brain dead individuals could be challenged in court, and informal reports suggest that hospitals have avoided promoting such donations because of the possibility of lawsuits.

The Human Tissues and Organs Transplant Ordinance, 2007

The situation could change with a well-drafted law and indeed for some years legislation has been discussed, if not introduced. Last month, even as a bill to curb the organ trade was to be tabled in the National Assembly, the Pakistan government introduced the Human Organs and Tissues Transplant Ordinance, 2007, reportedly to bypass the bill. Those who have had an opportunity to read the ordinance have stated that it contains many flaws. Some of these: relatives by marriage are permitted to donate; those nursed by the same woman are considered relations by blood; unrelated organ donations are permitted under some circumstances, and there is a mention of compensation for organ donation. The ordinance even proposes a regulated pool of "voluntary" donors. The evaluation committee which is meant to ensure that transplants conform to ethical practice consists of a surgeon, a physician and a "community notable" – at least two out of three could benefit from paid transplants. The section on efforts to promote cadaveric transplant is also said to be flawed (8). Clearly Pakistan's organ trade mafia has been able to influence those who drafted the law.

In this context one can look at Iran where a government-run system pays unrelated donors, thus eliminating the middle person. It has been argued, even by advocates of a cadaveric programme, that the system is fair and not exploitative; both rich and poor have access to transplants, and the donor must be of the same nationality as the recipient (9). However, reports suggest that paid donors in a regulated, legal programme are no better off than those in unregulated markets such as in India (10). And while the waiting lists have reportedly gone, only 10 per cent of transplants are from deceased donors. Will regulated compensation impede the development of a cadaver-based programme in Iran?

Asian organ market?

As many countries of Asia offer themselves as the physicians and surgeons of the world, leveraging their lower human resource costs, there is a real danger that the poor of this region will become organ farms for those who are better off. Health professionals and activists must raise public awareness to promote cadaveric transplant programmes, and prevent what is currently illegal and still underground from being given the garb of legality and social respect.

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