COMMENTS

Working towards ethical organ transplants

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The sale of kidneys is a regular scandal in India. A recent expose of yet another racket in the sale of kidneys in Tamil Nadu involved persons affected by the December 2004 tsunami. When some of them did not receive the money they were promised, they complained to the police (1). This is one more example of coercion and exploitation of people who are poor and the inability of the law to protect their interests.

The Transplantation of Human Organs Act (2) was passed by the Indian parliament in 1994 and subsequently ratified by the state assemblies. It accepts brain death as a form of death and prohibits commerce in organs. It limits the donation of organs without any legal restrictions by only the first relatives (mother, father, brothers, sisters, son, daughter and spouse) of the recipient. By accepting brain death as a form of death, the law was expected to use a large pool of patients for organ donation and overcome the shortage of organs, especially of kidneys. It was also expected to help develop other critical solid organ transplant programmes such as of liver, heart, lungs, and pancreas.

Since the Act was passed approximately 1,200 transplants have been done of various organs that were sourced from this pool; however donations have been sporadic and the numbers have not been able to cater to the demand for organs (3). This has resulted in a thriving trade involving commercial donors and middlemen. In most instances media reports have also indirectly pointed a finger at medical professionals. In a few instances the media have caught doctors unaware by using a hidden camera. Rarely however have any direct allegations been made.

Factors promoting the trade in organs

Two central issues related to the trade in organs need to be addressed: the effectiveness in implementing the current law, and the financial compulsions that make people donate their organs.

Sub clause 3, clause 9, chapter II of the Act gives room for unrelated transplant activity. It states: "If any donor authorises the removal of any of his human organs before his death under sub-section 1 of section 3 for transplantation into the body of such recipient, not being a near relative as is specified by the donor, by reason of affection or attachment towards the recipient or for any other special reasons, such human organ shall not be removed and transplanted without the prior approval of the Authorisation Committee."

This clause has been grossly misused over the years. Patients with organ failure have used the clause to feel instant 'affection' for a stranger who is willing to donate his/her organ for money; later the same person may claim he/she was duped or not paid enough for the organ, and all the affection that was presented to the authorisation committee evaporates. Doctors often feel they need not object when the law provides a clause to help people whose family members refuse to donate, or who do not have a fit or matching donor. For the medical professional, the plight of the recipient may overrule all objections. Doctors have also argued that it is difficult for them to gauge 'true' affection and that this is the responsibility the authorisation committee.

The authorisation committees, when presented with such a case, look at the provisions of the law. They argue that if the recipient and donor pledge affection in front of the committee members, they need not object unless there is a complaint or some gross oversight. They argue that since the doctor sends such cases to the committee, it is the responsibility of the doctor to verify claims of affection.

Given these difficulties, should this clause be used as leniently as is being done at present or should it be tightened? Can we overlook the exploitation in the 'affection' that is obtained by the recipient or the middleman by luring a donor with money? MK Mani, chief nephrologist at the Apollo Hospitals in Chennai, writes, in a 1997 article, "The stalwarts of the unrelated live donor programme continue to do as many transplants as they did before the Legislative Assembly of Tamil Nadu adopted the Act. What is more, they do them with the seal of approval from the Authorisation Committee, and are therefore a very satisfied lot. The law, which was meant to prohibit commercial dealings in human organs, now provides protection for those very commercial dealings" (4).

We must also ask what circumstances compel donors to risk their health to donate an organ. Some case studies uncover the fragility of the economically poor communities of the donors. With reference to a study of why people in Tamil Nadu donate their organs, Madhav Goyal and his colleagues write, "Ninety-six percent of participants sold their kidneys to pay off debts. The average amount received was $1,070. Most of the money received was spent on debts, food, and clothing. Average family income declined by one third after nephrectomy (P<.001)

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and the number of participants living below the poverty line increased. Three fourths of participants were still in debt at the time of the survey. About 86 per cent of participants reported deterioration in their health status after nephrectomy. Seventy-nine percent would not recommend that others sell a kidney" (5).

Ways to limit the organ trade

Organ sale or donation is a manifestation of poverty and desperation. The commerce in kidneys in India is linked to our socio-economic structure. An alternative is required, which can help to eliminate organ trade and overcome the shortage of organs. It is time to seriously think of ways by which we can promote the cadaver donation programme.

The cadaver donor programme could gain momentum with additions or amendments in the Act such as these (6):

1. A 'required request' law that would make it compulsory for hospital staff to ask for organs in the event of brain death.
2. A mandated 'choice of organ donation' clause in driving licenses issued in India.
3. Undertaking post mortem examination at the same time as organ retrieval surgery in medico-legal cases. At present, after surgery for organ retrieval, the brain dead person is again subjected to a post-mortem; this causes unnecessary emotional trauma to already aggrieved relatives.
4. De-linking hospitals where organs can be retrieved from hospitals where they can actually be transplanted. Moving bodies from a hospital that is not approved to another that is approved limits the number of brain dead patients made available. Such movement is difficult in brain death situations and its traumatic for the patient's relatives.
5. Making it compulsory to appoint transplant coordinators in the intensive care units of hospitals undertaking cadaver organ transplant, in order to identify and maintain brain dead patients. This transplant coordinator can be a senior nurse or a doctor

It is also necessary to ensure that sub clause 3 of the Transplantation of Human Organs Act is not misused. It may help to promote living transplant by:

1. Strengthening and making the authorisation committee's work more transparent by including NGOs representatives on the committee to help with pre- and post-authorisation counselling of kidney donors.
2. Providing uniform guidelines to authorisation committees on how to interview donors and recipients.
3. Recording the proceedings of the authorisation committee meetings.
4. Authorising select labs to undertake tissue matching.
5. Exploring possibilities of paired donations where a close relative or partner is fit and able to donate an organ but is not biologically compatible with the potential recipient. This couple can be matched to another couple in a similar situation, so that both the pairs in need of a transplant receive a matched organ.

It is important to set right the ethics of organ donation and transplant. At a time when cutting edge advances in health sciences relate to organ regeneration, tissue engineering and cloning, the ethics of kidney transplants is a test and will help us in addressing many medical ethical dilemmas in India.

References

1. Special correspondent. "Measures to prevent irregularities in kidney donation under consideration" *The Hindu* 2007 Jan 22. [cited 2007 Mar 9]. Available from: http://www.thehindu.com/2007/01/22/stories/2007012209350400.htm
2. Government of India. Transplantation of Human Organs Act, 1994. Central Act 42 of 1994. [cited 2007 Mar 9]. Available from: http://www.medindia.net/tho/thobill1.asp
3. Editorial. INOS and the essence of organ sharing. Ethics of organ donation and transplantation *Indian Transplant Newsletter* 2004: 5 (17-18): 1.
4. Mani MK. Making an Ass of the Law. Letter from Chennai. *Natl Med J India* 1997; 10: 242-3.
5. Goyal M, Mehta R L, Schneiderman LJ, Sehgal AR. Economic and health consequences of selling a kidney in India *JAMA* 2002;288:1589-93
6. Shroff S, Navin S, Abraham G, Rajan P S, Suresh S, Rao S, Thomas P. Cadaver organ donation and transplantation-an Indian perspective. *Transplant Proc* 2003: 35, 15-7.