

Ethical Issues of Organ Transplantation.

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Abstract:

Organ Transplantation involves a surgical procedure where in a new organ replaces a deteriorating or damaged organ in the human body, Heart, lungs, Kidneys are examples of such organs. They are composed of tissues and cells that work together to perform specific essential functions in the human body.

In the present scenario, the transplantation of many organs between well-matched human beings is marked with huge success. Heart and lung or heart-lung transplants, liver and pancreas (or pancreatic islets) transplants are also becoming more common, while kidney, cornea, bone marrow and skin transplants today are considered routine for certain conditions. According to Dr. Robert White, even a human head transplant, which should perhaps be better referred to as a body transplant, may be possible.

However the balance between demand and supply is hugely distorted, marked simultaneously by high costs of some organ transplants. Consequently numerous questions come up today regarding procurement, distribution of scarce resources, and their coverage by community funds.

The ethical and legal issues related to organ and tissue procurement and transplantation are often discussed in light of age old principles of autonomy, compassion, non-maleficence, free and informed consent, dignity, integrity and equality of human beings, justice, and the common good. *"In the donation and transplantation of human organs, respect is to be given to the rights of the donor, the recipient and the common good of society"*.

Keyword: Ethical, Deceased donor, Living donor recipient.

Introduction.

Modern Medicine of the 21st Century now allows transplantation of organs like the kidneys, liver, pancreas, lungs, heart and tissues like corneas, veins, valves, skin besides bones and tendons (musculoskeletal grafts). The majority of the cases of organ transplants globally are renal transplants or kidney transplants. Corneas are the most commonly grafted tissues worldwide. The first live donation of a kidney took place in the 1950s, whereas grafting of part of the organs is a more recent medical break through of the 90s. As stated. organs donors may be living persons or cadavers. It is widely accepted in the medical fraternity that organs may be retrieved from cardiac-dead patients for up to 24 hours. Tissues, on the other hand can be preserved for about five years. So tissues offer the capability of being 'banked' whereas organs do not. Recent years have seen experiments being carried out in the field of regenerative medicine, which might allow engineers and scientists to grow full organs just from the stem cells of individuals.

Organ Transplantation, although a boon for mankind, has also brought to the fore a number of ethical issues like when is the right to consent for donating an organ or the definition of death. Upsurge in demand of organs and tissues, due to the incredible success rate of organ transplant surgeries, has put

an unbelievable amount of strain on the supply side. Consequently, opportunistic individuals have found a way of profiting from this gap between demand and supply. This has led to a strong emergence of organized organ trade globally. To tackle such bioethical issues, nations around the world have enacted legislations for the regulation of the removal and transplantation of organs and tissues in humans. The prime aim of all these legislations has been the protection of the economically weaker sections of the society from being exploited for their organs and tissues. Transplants from cadavers have been a solution to the surge in demand of organs and tissues and have been implemented quite successfully in the West. Where organs removed from living donors can be preserved for transplantation only for a few hours, organs can be preserved in brain dead patients for as long as the patient is kept alive medically in the hospital. The major outcome of the recognition of this procedure has been that organs from brain dead patients or cadavers are not being wasted and are being transplanted in waiting near death, yet curable, recipients.

Although organ transplantation has helped save the lives of many who would have died otherwise, a lot many of the end stage patients fail to receive timely transplantations due to a scarcity of viable organs. The enactment of the Transplantation of Human Organs Act, 1994 in India has been a step towards correcting that position by regulating the removal and transplantation of human organs. However, lack of proper implementation and ignorance of the government has led to the abject failure of the objective of the enactment. The direct consequence of this has been the uneven distribution of viable organs amongst the numerous recipients on the waiting list which has further had a domino effect through a tremendous increase in illegal organ trade. In this entire melee, the Medical Councils and other such organizations have played only a passive part. Although the media has been uncovering numerous kidney rackets and organ trade scandals, no medical body has seen fit to come out to condemn such acts, let alone conduct any investigation. The direct result of all these problems has seen innumerable end stage organ failure patients die, waiting for organs for transplantation.

Ethical issues regarding the donor

In the present scenario, the transplantation of many organs between well-matched human beings is marked with huge success. Heart and lung or heart-lung transplants, liver and pancreas (or pancreatic islets) transplants are also becoming more common, while kidney, cornea, bone marrow and skin transplants today are considered routine for certain conditions. According to Dr. Robert White, even a human head transplant, which should perhaps be better referred to as a body transplant, may be possible.¹

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¹Appleton International Conference, "Developing Guidelines to Forgo Life-prolonging Medical Treatment", The Bioethics Bulletin, pp2-7 (University of Alberta, Edmonton, January 1993)

and transplantation of human organs, respect is to be given to the rights of the donor, the recipient and the common good of society.”²

From the Deceased

A person may will to dispose of his body and to predetermine for purposes that are constructive, morally impeccable and even righteous, with the desire to aid the sick and suffering. A decision of this nature with respect to his own body should not be condemned if positively warranted.³

More recently (1985) the Pontifical Academy of Sciences stated:

*"Taking into consideration the important advances made in surgical techniques and in the means to increase tolerance to transplants, this group holds that transplants deserve the support of the medical profession, of the law, and of people in general. The donation of organs should, in all circumstances, respect the last will of the donor, or the consent of the family present."*⁴

Such a donation can greatly benefit others without harm to the donor who is dead.⁵ However donation is not obligatory as it is against some people's consciences for religious or other reasons.

In any given circumstance, **proper respect** should always be shown human cadavers as although they now do not have life they once bore the presence of existence as a living organism. The potential donor, who is going to die, needs to be provided the **usual care** that is extended to any critically ill or dying person. Considering the potential conflict of interest, the transplant teams should be diverse from the team providing care for the potential donor, who is not to be **"deprived of life or of the essential integrity of their bodily functions....** No organs may be removed until the donor's death has been authenticated by a competent authority other than the recipient's physician or the transplant team."⁶

From Living Persons (Adults, Mentally Disabled, Minors)

Catholic theologians have always considered the human body to be sacred and alterations in form unless necessitated for survival are considered to be against the laws of nature. This is called the Principle of Totality.⁷ This principle was considered to be law before transplantation came to be discovered as a novel way of saving numerous lives. Its discovery also brought along the debate regarding the ethics of organ transplantation. It was argued by many theologians that mutilating one person for the benefit of another goes against the accepted Principle of Totality. As the science and procedures of transplantation evolved, the debate regarding its ethics started getting focused on organs that were unique and essential to the donor like the heart. The transplantation of other organs existing in pairs in the body like kidneys

²Benedict M Ashley OP and Kevin D O'Rourke OP, *"Ethics of Health Care"*, St. Louis: Catholic Health Association of the United States (1986)

³*"The Bombay Experience with Cadaver Transplant—Past and Present"*, Vol. 1, Indian Transplant Newsletter, p 3 (1999)

⁴*"Health Care Ethics, Third Edition."*, St. Louis: Catholic Health Association of the United States (1989)

⁵Associated Press, *"Brain-dead woman suffers miscarriage"*, The Edmonton Journal, November 17, 1992

⁶Helen Levine Batten, James Shanteau and Richard Jackson Harris, (ed), *"The Social Construction of Altruism in Organ Donation,"* Ch. 8 in *"Organ Donation and Transplantation: Psychological and Behavioral Factors,"* (American Psychological Association, Washington, DC, 1990)

⁷Robert C Cefalo and H. Tristram Engelhardt, Jr., Eike-Henner Kluge, (ed.), *"The Use of Fetal and Anencephalic Tissue for Transplantation,"* in *"Readings in Biomedical Ethics: A Canadian Focus"*, pp367-78 (Prentice Hall Canada Inc., Scarborough, 1993)

or organs that are capable of regenerating, if excised, like cornea or pancreas, was allowed. It was difficult to comprehend for some that how could a procedure be allowed to be carried on which endangered the life of one human being for saving the life of another.

The 1950s saw a whole sale change in view point. Theologians like Gerald Kelly considered transplantation to be a noble cause which propagated the Principle of Fraternal Love and Charity. The idea of saving a dying man's life by compromising another's started to gain acceptance as charity and love for a fellow human being. It also argued by some that transplantation of organs was allowed provided the functional integrity of the body of the donor was not compromised. For example kidney transplants were considered to be ethical as the donor could survive on one kidney, however, donation of an eye would significantly compromise the visual integrity of the donor and would therefore, considered to be against the laws of nature.⁸

Another ethical question that has remained at the centre point of medical practice has been Free and Informed Consent. This principle is fundamental to medical ethics. To obtain free and informed consent from the donor it is absolutely vital that all information should be provided to him; information that includes the risks involved in the procedure, the odds of success of the graft and all possible information regarding alternative treatments. This leads us to the principle that is accepted globally by all theologians - the principle that distinguishes ordinary and extraordinary means to save another human being's life. It is argued by many that a human being is only expected to use ordinary means to save another, extraordinary means involving invasive surgery would amount to endangering and in some cases sacrificing one life for another. The Courts have, therefore, rightly stayed away from ordering transplantations using living donors. However, transplantation of organs using cadavers or brain dead patients has provided a solution to this ethical dilemma.⁹

Another ethical issue that has always cropped up in debates regarding organ transplantation is donation of organs by the mentally disabled and minors. It has been argued by some that although a guardian is allowed to consent for medical procedures on the mentally disabled and minors provided these procedures are for the best interests of the incompetent person, but should the guardians be considered to be competent for consenting to organ donation by minors and the mentally disabled. Some, therefore, suggest that minors and the mentally disabled should never be allowed to donate organs. Organ Donation from them has the highest risk of being misused and the minor or the mentally challenged being subjected to exploitation. Another correlating question is should a person be allowed to conceive another child just for the purpose of using him for organ donation. Conceiving a child just for organ donation would be rearing goat for slaughter and would be the greatest violation of dignity of life.¹⁰

⁸James Childress, "Rationing of Medical Treatment" in "Encyclopedia of Bioethics", pp1414-19 (The Free Press, New York, 1978)

⁹Sunil Shroff, "Working towards ethical organ transplants", Vol. 4, Indian Medical Journal: Ethics, pp 68-9 (2007)

¹⁰Chilean Bishops' Permanent Commission, "On Organ Transplants", Catholic International, pp374-5 (April 1991)

From Anencephalic Infants

Anencephalic infants are those who take birth with a substantial portion of the brain absent. They can suck and cry with variation in their level of consciousness. If born alive they are more likely to die within a few days, though it has been noted in rare cases some survive for weeks or months.¹¹

From Human Foetuses

A very prominent question that is often asked is that whether it is ethical to transplant brain or other tissues from human foetuses. If the foetus has died of natural causes, the ethical issues would be parallel to that covering cadaveric transplant. On the other hand, in case of death of the foetus due to procured abortion, other ethical and legal issues come into the picture. Religion from all sects considers abortion to be gravely immoral while law makes abortion illegal and punishable, barring a few exceptions. Justifying abortion in the name of benefiting others may lead to providing excuses for many women and families who otherwise are unsure about having an abortion. A good end though does not justify an evil means. The timing of the abortion may be influenced as well.¹²

Ethical Issues Regarding the Recipient

The German Bishops' Conference and the Council of the German Evangelical Church considers: *"...nobody [ie no potential recipient] has a claim on organs or tissue of any person, living or dead The sick should thus accept the tissue and organs freely offered by others as a gift."*¹³

Informed and Free Consent of the recipient is similarly necessary as that of the Donor. It is absolutely essential that the recipient should be made aware of the potential risks, odds of success and possible alternative treatments before proceeding to ask for consent. In case of incompetent individuals like minors and the mentally challenged the guardians should be made aware of all possibilities and outcomes, risks and benefits. In some cases where the minors are mature enough or the mentally challenged are capable of understanding the consequences of organ transplant procedures, they should be made aware of these situations in a calm, appropriate and understandable way. The guardians should not in any way try to influence the incompetent person in their care to undergo such procedures. They should always act in an objective sense for the best interests of their ward.

Further, practices of influencing the doctors and physicians of favouring a particular recipient and moving him up on the waiting list of recipient, are highly unethical. These practices violate the rights of other potential recipients who are waiting for organs for transplantation. Similarly the practice of obtaining organs illegally and by exploiting someone's weakness is also considered to be a violation of the right to life and dignity Recipients should strictly dissociate themselves from such practices.¹⁴

Organ Donation and Transplantation, although a boon for many, has its own specific evils in a country like India, where there is no shortage of the poor and no limit on the ability of the rich to exploit

¹¹Thomas G Dailey, *"Fetal Tissue Transplants: Some Ethical Questions"* (St. Joseph's College Catholic Bioethics Centre, Edmonton, January 1993)

¹²H. Tristram Engelhardt, Thomas A Shannon, (ed.), *"Allocating Scarce Medical Resources and the Availability of Organ Transplantation: Some Moral Presuppositions"* in *"Bioethics, Third Edition."*, pp565-79 (Paulist Press, Mahwah, 1987)

¹³Thomas M Garrett and Harold W Baillie and Rosellen M Garrett, *"Health Care Ethics: Principles and Problems"*, Ch. 9, pp 748-56 (Prentice Hall, Englewood Cliffs, 1993)

¹⁴S Shroff and S Navin, et al, *"Cadaver organ donation and transplantation-an Indian perspective"*, Vol. 35, *Transplant Procedure*, pp 15-7 (2003)

and benefit from poverty. Lack of government mandated health insurance programs coupled with the growth of the middle class and advancements in organ transplantation procedures, has led to one inevitable outcome – commercialization of organ donation and transplantation. With no limit on the amount of money that the rich are ready to pay for organs and unlimited number of poor, ready to get exploited, population in India, this country is the hot bed of global organ trade.¹⁵ People in India, be it rich or middle class, when faced with the last option of organ transplantation as a means of saving their loved one's life, always have this question in mind – “Why should someone in the family, related to the patient, put his or her life in danger by donating an organ?” They then answer this question with the one answer that is both illegal and unethical, but disgustingly acceptable in society – “Let's buy the organ from someone who is in desperate need of money.”¹⁶ With a billion strong country, there is no shortage of poverty stricken people ready to sell their organs for money as a means to solve their short term problems. This makes organ trade in India a dangerous societal issue quite different from other socially exploitative problems. The reason this problem is unique is because it involves an extremely invasive surgical procedure that can only be carried out by highly trained professionals with help from every level of social system including law enforcement agencies.¹⁷

It has been noted in a certain studies and surveys that the organ donation motivated by purely commercial gains has led majority of the donors to be prone to ill-health in the post operative period. On the other hand donations motivated by purely altruistic intentions have a feel good factor attached to them. Although such outcomes are anything but conclusive to go by, their inference might actually be true in the peculiar conditions in India. It has been proven that people in India are highly susceptible to diabetes and hypertension, so organ donations purely for monetary benefits often has negative side effects.¹⁸

Conclusion

Organ transplantation is more than a discovery, it is a gift of science to humanity. Advancements of this branch of science have made possible the greatest of medical miracles. However, despite its success and the ability to save precious lives of near and dear ones, the awareness of the same is still its weakest link. The consciousness of the beauty of organ transplantation and the aspect selfless altruism connected with it, needs to be spread amongst the human community. The utility of such a phenomenon is nothing but equivalent to divine Act of God.

In order to facilitate the endorsement of organ donation, various countries around the world have carried out variety of processes. The most apt method of augmenting such a practice and creating awareness is by working in tandem with various non-profit organizations. The Governments all over the world, with the service of newspapers, media and NGOs need to spread awareness pertaining to this miracle

However, since every aspect has to be viewed from an objective point of view, it cannot be denied that certain negative features have also crawled into this process of organ transplantation. Organ Transplantation legislation around the world have always focused on ensuring that the bonafide donors and recipients along with their family members and the physicians, are protected from being exposed to

¹⁵ Available at <http://www.tn.gov.in/sta/tables.htm> (Visited March 19, 2015)

¹⁶ R Kakodkar and A Sooin and S Nundy, “Liver transplantation in India: Its evolution, problems and the way forward”, Vol. 20, National Medical Journal of India, pp 53-6 (2007)

¹⁷ “Karnataka's unabating kidney trade”, Vol. 19, Frontline, p 7 (2002)

¹⁸ MK Mani, “Making an Ass of the Law. Letter from Chennai”, Vol. 10, National Medical Journal of India, pp 242-3 (1997)

the inevitable ills of organ transplantation like illegal organ trade. These laws also regulate the whole process and procedures relating to organ transplantation, thereby safeguarding that malpractices do not creep in the system. However, due to the fact that these procedures require human involvement, it is almost impossible to completely eradicate the inevitable evils of this procedure as human greed, unethical practices and option of exploiting some other for your own gain can never be completely ruled out.

Further, the moral principles and issues involved with organ transplantation have to be appreciated, so as to create a concrete structure of organ transplantation in the country so that impediments that are to come with the change in tide of time can be encountered and dealt with easily. The potential areas in the field of medicine, where organ transplantation is required is to be realised. The gap created between legitimate organ donors and the ones who actually need it, has to be recognized and bridged and that can only be done by harmonizing and spreading awareness amongst the people of the country belonging to various strata.