



**IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION**

WRIT PETITION (CIVIL) NO. 39 OF 2025

**INDIAN SOCIETY OF ORGAN
TRANSPLANTATION**

.....PETITIONER

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENTS

J U D G M E N T

B.R. GAVAI, CJI.

1. The present Writ Petition has been filed at the instance of the *Indian Society of Organ Transplantation* in order to highlight the issues with regard to uniformity, equality and access in the realm of organ donation for both the donors and the recipients.
2. The *Transplantation of Human Organs Act, 1994* (for short, “the 1994 Act”) was enacted pursuant to the resolutions passed by various States under Article 252(1) of the Constitution of India. The said legislation falls under Entry 6 of List II of the 7th Schedule pertaining to “*Public health and sanitation; hospitals and dispensaries*”. The 1994 Act was adopted by all the States.

3. Certain important amendments were made to the 1994 Act in the year 2011, again pursuant to the resolutions passed by the States under Article 252(1) of the Constitution of India. The main purpose of the 2011 amendment was to include ‘*tissue*’ transplants within the scope of 1994 Act. The said amendment also introduced Section 9(3A) enabling swap transplantation for the first time. It also broadened the definition of ‘*near relatives*’, set up the National Human Organs and Tissues Removal and Storage Network, and established the National Registry for Transplants. *The Transplantation of Human Organs and Tissue Rules, 2014* (for short, “the 2014 Rules”) were also brought into force in line with the changes made in the 1994 Act.

4. It appears that one of the States, *i.e.*, the State of Andhra Pradesh has not yet adopted the 2011 amendment. It further appears that the States of Karnataka, Telangana, Andhra Pradesh and Manipur have not yet adopted the 2014 Rules. It further appears that after the last affidavit was filed by the Union of India, as per the directions issued by this Court, now the State of Karnataka has passed a resolution dated 21.08.2025 adopting the 2011 amendment. Such a non-

adoption till now, severely impedes the possibility of adoption of a uniform national policy and national grid and reduces the chances of transplantation in the concerned States as well as the rest of the country.

5. We, therefore, request all the States/Union Territories, who have not yet adopted the 2011 amendment and/or the 2014 Rules, to take into consideration the importance of the issue and adopt the same.

6. It further appears that two north-eastern States *i.e.*, Meghalaya and Nagaland and three Union Territories, *i.e.*, Andaman and Nicobar Islands, Lakshadweep and Ladakh are presently functioning without a State Organ and Tissue Transplant Organization (for short, “SOTTO”). Mr. K. Parameshwar learned senior counsel appearing on behalf of the petitioner submits that unless the SOTTO is established in the said States/Union Territories, the work of organ/tissue transplant cannot be performed.

7. Learned senior counsel for the petitioner further states that there is an acute shortage in the number of organ donations in the country. He submits that in order to tackle the

shortage, two policy measures need to be taken. *First* is linking of brain-stem death certification with the death certification, and the consequent option to donate organs. The *second* suggestion of the learned senior counsel is development of a national policy as well as national portal to operationalize swap transplantation under Section 9(3A) of the 1994 Act.

8. Insofar as brain-stem death certification is concerned, learned senior counsel submits that Form 4 and Form 4A of *Registration of Births and Deaths Rules, 1999* be amended across the country to include a column on brain dead certification and an option to donate organs. It is the contention of the petitioner, which is working on the national level in the field of organ transplantation, that such a measure would exponentially increase awareness of possibility of the organ donation in brain dead persons and will increase the number of organ donations pursuant thereto.

9. The learned senior counsel for the petitioner has highlighted that as per the National Organ and Tissue Transplant Organization (for short, “NOTTO”), the importance of donation by persons who are certified to be brain-stem dead is

much more, as they can donate up to eight vital organs, whereas the person who has suffered natural cardiac death can only donate tissues.

10. Another issue highlighted by the learned senior counsel for the petitioner is with regard to the swap transplantation, which is permitted under Section 9(3A) of the 1994 Act. According to the petitioner, on account of low deceased organ donation rates and donor-recipient incompatibility, a national policy for swap transplantation would go a long way in the matter of organ donation/transplantation. It is submitted that in the absence of a national policy coupled with the fact that different States have either no policy, or an independent policy, the swap transplantation is not being done though a large number of donors are available. It is further submitted that a national grid for swap transplantations and organ donations would enable different donors and different recipients in various States across the country to connect thereby increasing the number of transplants. It is, therefore, submitted that the Union of India through the NOTTO must formulate a national policy to ensure equitable access to swap transplantation for addressing the

existing inequalities in the healthcare system.

11. Learned senior counsel for the petitioner further submitted that the capacity for organ transplantation must also take into account the fact that the number of registered hospitals under the 1994 Act and the 2014 Rules is abysmally low and almost non-existent in some States. It is submitted that in some of the States like the States of Jharkhand, Meghalaya, Mizoram, Nagaland, Sikkim and Union Territories of Andaman and Nicobar Islands, Ladakh and Lakshadweep, no government hospital is available for carrying out organ transplantation. It is accordingly suggested that the Union of India through the NOTTO and in consultation with the States must evolve a five-year plan to address these concerns and ensure that hospitals are equipped with facilities and doctors, meeting the standards as required under the 1994 Act and 2014 Rules in every State. It is further stated that the said plan must also account for the *per capita* transplantation requirements in larger States and suggest measures for increasing the capacity as well as awareness across the country regarding organ transplantation.

12. We are also informed that the allocation criteria, which is made by the States under Rule 31(4)(f) of the 2014 Rules differs from State to State. It is submitted by the learned senior counsel for the petitioner that while the criteria may be reasonable in each State, the lack of a national policy allows for “gaming of the system” by a select few who have the resources and capability to register in different States. It is submitted that the allocation criteria does not address concerns of gender, class and region thereby resulting in discrimination, which is impermissible. The learned senior counsel submitted that the High Court of Gujarat has struck down the requirement of domicile for registration for transplantation in the case of ***Vidya Ramesh Chand Shah v. State of Gujarat***¹. It is further submitted that a uniform national policy is imperative to secure the substantial right to health. He submits that the Union of India as well as the States/Union Territories should play a cooperative role in facilitating organ donation/transplantation.

13. In response to the concern expressed by this Court when the matter was heard yesterday that many a times the live donors are left in the lurch after they donate their organs,

¹ (2022) SCC OnLine Gug 2021

learned senior counsel for the petitioner while referring to the Guiding Principles for Organ Donation laid down by the World Health Organization, submitted that the guiding principles mandate that the donor's concern is voluntary and informed. He further submitted that the WHO's guiding principle (specifically No. 3) provides that live donations are acceptable, when professional care of donors is ensured and follow-ups are well organized. In this regard, he refers to the judgment passed by the High Court of Kerala in the case of ***Moideen vs. State of Kerala***² authored by one of us (K. Vinod Chandran, J., as he then was), wherein the High Court observed thus:

“16...The renal parameters of a donor are assessed at the time of transplant and it does not take into account the medical complications that may arise in future due to the stress on the remaining organ. There is also an element of risk to the donor who is subjected to a surgical procedure and recovery therefrom. Quests in life are many and varied, for the haves, but for most; the have-nots, it is ‘a better tomorrow’. To loose hope in life and to sell ones own organ to achieve better living conditions is not a happy situation. Live organ transplantation for consideration, other than love, affection for a willing sacrifice, is abhorrent to the concept of a healthy, civilized society.”

² (2017) SCC OnLine Ker 21219

14. It is relevant to note that the Kerala High Court notices the WHO's Guiding Principles for Organ Donation and holds that *"Truly altruistic motives will also not be directed against an individual and life of one is as precious of yet another"*.

15. We concur with the view taken by the High Court of Kerala and hold that though the life of a recipient is required to be taken care of, equally the life of a live donor who parts with a valuable part of his body should not be neglected and should be adequately taken care of after the operation is carried out.

16. In that view of the matter, we find it appropriate that the NOTTO must come forward with a national policy which also addresses concerns with regard to the maintenance of the health of a live donor after the operation is carried out.

17. We have also heard Mr. Tushar Mehta, learned Solicitor General of India and Ms. Archana Pathak Dave, learned Additional Solicitor General of India.

18. We must place on record our appreciation for the learned Solicitor General of India as well as learned Additional Solicitor General, who have assisted this Court by not treating the present petition as an adversarial litigation. We must also

place on record our appreciation for the Union of India as it has acted in a collaborative manner with the petitioner to arrive at practical solutions for the issues raised in the petition.

19. In light of the above, we issue the following directions:

- i. We request the Union of India to persuade the State of Andhra Pradesh through its Chief Secretary or the Principal Secretary of Health to adopt the *Transplantation of Human Organs (Amendment) Act, 2011* by explaining to them the importance of such adoption.
- ii. We also request the Union of India to, in a similar manner, persuade the States of Karnataka, Telangana, Andhra Pradesh and Manipur to adopt the 2014 Rules.
- iii. We direct the Secretary, Health and Family Welfare, Union of India to personally monitor the aforesaid points contained in sub-paragraphs (i) and (ii) of this paragraph.
- iv. The Union of India is directed to constitute a SOTTO for the States of Meghalaya and Nagaland under the aegis of National Organ Transplant Program after due

consultation with the concerned States.

- v. The Union of India through NOTTO is requested to evolve model allocation criteria in consultation with all the States so as to ensure a uniform national policy for transplantation. The uniform national policy guidelines must include provisions to alleviate the concerns with respect to gender, class and regional discrimination and provide appropriate remedial provisions for the same. The policy must endeavor to have uniform criteria for the registration of patients, donors and formats throughout the country.
- vi. We also request the Union of India through Ministry of Home Affairs in consultation with NOTTO, Ministry of Health and Family Welfare and the petitioner-organization to consider amending Form 4 and Form 4A of the *Registration of Births and Deaths Rules, 1999* so as to include a column on whether the deceased was a case of brain-stem death and if that be the case to indicate whether the option to donate organs was given to the relatives of the deceased.

- vii. We further request the Union of India through NOTTO to evolve national swap transplantation guidelines in consultation with all States to implement Section 9(3) of the 1994 Act. The swap transplantation guidelines should be on a national level providing equal opportunities to all the persons for swap and must be done digitally through an accessible web portal.
- viii. The Union of India through NOTTO in consultation with all the States/Union Territories is requested to develop transplantation facilities where there are inadequate public health facilities. Further, the Union of India through the NOTTO is requested to develop a five-year plan mapping the course for development of transplantation facilities in India.
- ix. We further request the Union of India to take on board all the States/Union Territories through the NOTTO and evolve guidelines for welfare of live donors, including measures to ensure an informed and voluntary consent, maintenance of a portal, mandatory follow-up with the doctors and to ensure they are cared for. This is to

ensure that commercialization and exploitation of donors is prevented.

- x. We request all the States/Union Territories to ensure that data related to organ donation and transplantation along with the details of donors and recipients of organs and tissues is reported by the concerned hospitals to the national registry maintained by the NOTTO as mandated under Section 13D of the 1994 Act.
- xi. We further direct all the State Governments/Union Territory Administrations to ensure that strict action is taken against the defaulting hospitals, who fail to furnish the data as has been directed by us in subparagraph no. (x) of this paragraph.

20. We reiterate our appreciation for the Union of India, the Solicitor General of India and the Additional Solicitor General of India for not treating the present matter as an adversarial litigation and assisting the Court in a collaborative manner. We also place on record our appreciation for Mr. K. Parameshwar, learned senior counsel, and his assisting counsel, who, despite

not possessing any expertise in medical field, have assisted us in passing the aforesaid judgment on the basis of their deep research and dedication.

21. The matter be placed after six months, preferably before a Bench of which K. Vinod Chandran, J., is a member.

.....**CJI.**
(B.R. GAVAI)

.....**J.**
(K. VINOD CHANDRAN)

NEW DELHI
19th NOVEMBER, 2025